

IN THE COURT OF BAKHT FAKHAR BAHZAD,
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT
GUJRAT

Misc application No. 32-16
In original CASE NO. 93-2016
Date of institution: 05-12-2016
Date of decision: 22-05-2017

Sheikh Shahid Abbas, S/O Malik Azmat Ullah, caste Malik, R/O Mohallah Khawajgan near Masjid Shair wali , Gujrat city.

Claimant

Vs

Mehar Muhammad Khalid S/O Muhammad Aalm, Caste Aarain, R/O Kanwawali Road opposite Jamia Masjid Faiz Gujrat.

(Defendant)

Present: Shahid Abbas along with his counsel Ch.Rizwan Aslam Warraich Advocate.
Mehar Khalid along with his counsel Muhammad Qamar Zaman Advuarte
Sarwar Sajid along with his counsel Malik Abdul Rasheed Advocate.

THE APPLICATION UNDER ORDER 1 RULE 10 CPC.

ORDER:

1. *In this order Punjab Consumer Protection Act, 2005 shall be called as "Act". The code of Civil Procedure as CPC, Sarwar Sajid as petitioner, Shahid Abbas as claimant and Mehr Khalid as defendant (herein after referred to as for brevity)*

2. *The brief facts giving rise to the present controversy are that above titled claim was filed by Sheikh Shahid Abbas against Mehar Muhammad Khalid for providing defective services and defective material on 29-11-2016. And in that claim defendant filed written statement on 05-12-2016. The petitioner Sheikh shahid Abbas has filed application under order 1 Rule 10 CPC for impleading him as necessary party in the claim, alleging that the claimant purchased material from his shop and issued cheque which was bounced and there is relationship of consumer and service provider between the petitioner and claimant in this regard he is necessary party and in his absence no affective order can be passed.*

3. *The claimant submitted the written reply of application wherein he denied any such relationship of consumer and service provider and prayed that application be dismissed being not maintainable.*

4. The main thrust of his arguments was provisions of Order 1 Rule 10 of CPC is not applicable on proceedings before consumer court. I have heard the arguments advanced by counsel for the parties at length and has perused all the relevant material produced before me. As the main castigation for the counsel for the claimant was that application under Order 1 Rule 10 of CPC is inapplicable before the consumer court so before proceeding further, I have to decide this legal preposition

5. The PROCEDURE ON RECEIPT OF COMPLAINT is provided in S.30 of PCP Act, 2005; as such if the intention of the legislature was to implement all the provisions provided in the Code of Civil Procedure, 1908, then it should not have been specified in S.30 (3) that the consumer court shall have the same powers as are vested in civil court while trying a suit, under the Code of Civil Procedure, 1908 (Act XX of 1908), in respect of the matters narrated in Clauses (a) to (e).

6. The matters incorporated in Clauses (a) to (e) of Sub-section (3) of S.30 of PCP Act, 2005 (Act ii of 2005) about which the powers given by the Code of Civil Procedure are to be exercised by the consumer court relate to: (a) the summoning and enforcing attendance of any defendant or witness and examining him on oath; (b) the discovery and production of any document or other material object which may be produced as evidence; (c) the receiving of evidence on affidavits; (d) issuing of any commission for the examination of any witness; and (e) **any other matter which may be prescribed.**

7. The obvious meaning of the last portion of the quoted law in clause (e) relating to “**any other matter which may be prescribed**” is to the effect that the list contained in clauses (a) to (d) is not exhaustive and any other matter may be prescribed in any provision of the same law on which the powers under the Code can be exercised by the consumer court.

8. My humble interpretation of the said clause is to the effect that other principles and powers contained in the said Code can also be used beneficially under the said clause by the consumer court to resolve the matter under the established procedure instead of remaining in the darkness and to avoid the failure of justice due to the absence of prescribed procedure in the consumer law and consumer rules but the technicalities should not be allowed to hinder the path of justice in the said process.

9. A glance on the SECTIONS of CPC shows that the principles of law are laid down regarding SUMMONS TO DEFENDANTS in S.27; SERVICE OF SUMMONS WHERE DEFENDANT RESIDES IN ANOTHER PROVINCE in S.28; SERVICE OF FOREIGN SUMMONS in S.29; POWER TO ORDER DISCOVERY AND THE LIKE in S.30; SUMMONS TO WITNESSES in S.31; PENALTY TO DEFAULT in S.32; POWER OF COURT TO ISSUE

COMMISSIONS in S.75; COMMISSION TO ANOTHER COURT in S.76; LETTER OF REQUEST in S.77; COMMISSIONS ISSUED BY FOREIGN COURTS in S.78; SUITS BY OR AGAINST THE GOVERNMENT in S.79; EXEMPTION FROM ARREST AND PERSONAL APPEARANCE in S.81; WHEN ALIENS MAY SUE in S.83; SUPPLEMENTAL PROCEEDINGS in S.94; REVIEW in S.114; UNAUTHORISED PERSONS NOT TO ADDRESS COURT in S.119; EXEMPTION OF CERTAIN WOMEN FROM PERSONAL APPEARANCE in S.132; EXEMPTION OF OTHER PERSONS in S.133; ARREST OTHER THAN IN EXECUTION OF DECREE in S.134; EXEMPTION FROM ARREST UNDER CIVIL PROCESS in S.135; EXEMPTION OF MEMBERS OF LEGISLATIVE BODIES FROM ARREST AND DETENTION UNDER CIVIL PROCESS in S.135-A; PROCEDURE WHERE PERSON TO BE ARRESTED OR PROPERTY TO BE ATTACHED IS OUTSIDE DISTRICT in S.136; POWER OF HIGH COURT TO REQUIRE EVIDENCE TO BE RECORDED IN ENGLISH in S.138; OATH ON

Page 3 of 6 (Meer Ahmad Qamar Khan V TMA Jampur) AFFIDAVIT BY WHOM TO BE ADMINISTERED in S.139; MISCELLANEOUS PROCEEDINGS in S.141; ORDER AND NOTICES TO BE IN WRITING in S.142; POSTAGE in S.143; ENFORCEMENT OF LIABILITY OF SURETY in S.145; SAVING OF INHERENT POWERS OF COURT in S.151.

10. A glance on the ORDERS of CPC shows that some are completely applicable while some can be applied only to the extent of certain RULES. The complete ORDERS which are applicable are enumerated as complete O.V(5) about ISSUE AND SERVICE OF SUMMONS; complete O.IX(9) about APPEARANCE OF PARTIES AND CONSEQUENCE OF NON APPEARANCE; complete O.X(10) about EXAMINATION OF PARTIES BY THE COURT; complete O.XI(11) about DISCOVERY AND INSPECTION; complete O.XII(12) about ADMISSIONS; complete O.XIII(13) about PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS; complete O.XVI(16) about SUMMONING AND ATTENDANCE OF WITNESSES; complete O.XVII(17) about ADJOURNMENT; complete O.XVIII(18) about HEARING OF THE SUIT AND EXAMINATION OF WITNESSES; complete O.XIX(19) about AFFIDAVITS; complete O.XXVI(26) about COMMISSIONS; complete O.O.XXVII(27) about SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY; complete O.XXVIII(28) about SUITS BY OR AGAINST MILITARY OR NAVAL MEN OR AIRMEN; complete O.XXIX(29) about SUITS BY OR AGAINST CORPORATIONS; complete O.XXX(30) about SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN; complete O.XXXII(32) about SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND; complete O.XXXVIII(38) about ARREST AND ATTACHMENT BEFORE JUDGMENT; complete O.XLVIII(38) about MISCELLANEOUS.

11. Scattered provisions of CPC applicable to the consumer court are to be found in O.VI(6),R.2 about PLEADINGS TO STATE MATERIAL FACTS AND NOT EVIDENCE; O.VII(7),R.14 about PRODUCTION OF DOCUMENT ON WHICH PLAINTIFF SUES; R.15 about STATEMENT IN CASE OF DOCUMENTS NOT IN PLAINTIFF "S POSSESSION OR POWER; R.17 about PRODUCTION OF SHOP BOOK; R.18 about INADMISSIBILITY OF DOCUMENT NOT PRODUCED WHEN PLAINT FILED; R.22 about PROCEDURE WHEN PARTY NOT FOUND AT THE PLACE OF ADDRESS; R.25 about SERVICE BY OTHER MODES; O.VIII(8),R.1 about WRITTEN STATEMENT; O.XIV(14),R.4 about COURT MAY EXAMINE WITNESSES OR DOCUMENTS BEFORE FRAMING ISSUES; O.XV(15),R.4 about FAILURE TO PRODUCE EVIDENCE.

12. The provision of section 30(e) of the Act has been purposely introduced which arms the court to decide any controversy between the parties while applying the Rules & Orders of the Code.

13. The above legal survey has constrained me to draw the conclusion that the application submitted by the petitioner under order 1 Rule 10 of CPC is maintainable before this court. Now coming to the merits of application, before drawing any conclusion I venture to place on record the provision of Order 1 Rule 10 (2) of CPC which is reproduced as under:-

"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The above provisions of CPC arms the court to exercise powers either suo moto or on application. That power can be exercised either to strike out or add parties. Addition of parties can be at the instance of plaintiff or at the instance of person who is not party to the suit. The plaintiff may seek to implead a person as additional defendant who is either a necessary or proper party.

15. The Yardstick to be applied while considering an application filed by the plaintiff to implead an additional defendant may not be the same while considering an application by a person who want to get himself impleaded against the wishes of the plaintiff. The plaintiff is dominus litis. Normally he would not be compelled to fight a litigation against a person with whom he does not want to fight and from he does not want to get relief. The natural justice is

not an unruly horse and the court while impleading any person as party must keep in mind that whether the person wishes himself to be impleaded is necessary or proper party or whether he ought to have been joined as party. The court may also allow a third person to come on record as an additional defendant if his right likely to be affected by the order that may be passed in the claim and whose presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the claim.

16. *Adverting to the claim filed by Sheikh Shaid Abbas under section 25 of the Act he has categorically stated that an oral agreement took place between himself and Mehar Muhammad Khalid and in pursuance of agreement he has been paying amount to the defendant off and on. He also issued blank cheque to the defendant who has been purchasing material from the petitioner and the petitioner issued receipts with regard to purchase of material to the defendant. The petitioner has himself produced the page No.34 and 35 of Khata of his shop which is also in the name of Mehar Muhammad Khalid who has signed in token of payment in Khata provided by the petitioner himself. The defendant gave cheque no.0666091 to the petitioner. It is pertinent to mention here that cheque was issued by the claimant to the defendant and not to the petitioner. When that cheque was bounced the petitioner lodged FIR NO.987/16 dated 01-10-2016 for offense under section 420/489-FPPC at Police Station Civil Line Gujrat against the claimant and during the investigation of the case it had come on the surface that claimant had not issued any cheque to the petitioner rather a blank cheque was given by claimant to Mehar Muhammad Khalid who used to purchase paint and other material from the shop of petitioner.*

17. *The claimant applied his pre arrest bail which was dismissed by court of session on 05-11-2016 and thereafter he approached the Honable Lahore High Court seeking the identical relief where he remained successful in getting the relief claimed in criminal miscellaneous 15560/b/16 and while deciding bail petition of claimant the Honable Lahore High Court has made following observation in para no.4 which is being reproduced here as under:-*

“During investigation, police came to the conclusion that neither petitioner purchased paint from the shop of the complainant nor issued cheque in his favour for payment of an amount mentioned therein, rather a blank cheque was delivered by the petitioner to one Mehr Muhammad Khalid (witness of FIR) who used to purchase paint and other material from the shop of the complainant and no business relationship was established between the petitioner and complainant. Keeping in view the facts and circumstances of this case, prima facie the cheque in dispute was not issued towards repayment of outstanding loan or fulfillment of some obligation, therefore, ingredients of section 489-F, PPC were prima facie missing in this case.

The maximum punishment provided for the offence under section 489-FPPC was three years, therefore, the offence alleged against the petitioner does not come within the purview of prohibitory clause of section 497 Cr.P.C. In view of the matter, false involvement of the petitioner in the instant case on the basis of malafides can not be ruled out. While relying on case law reported as Mian Allah Ditta Versus State (2013SCMR 51) this petition is accepted and ad interim pre-arrest bail already granted to petitioner by this Court vide order dated 08-11-2016 is confirmed subject to his furnishing fresh bail bonds in the sum of Rs.50000/- (Rupees fifty thousand only) with one surety in the like amount to the satisfaction of the learned trial Court.”

18. *In the light of the above discussion I am constrained to draw the inference that no relationship of consumer and service provider has been established between the petitioner and claimant. in my view the petitioner is neither a necessary party nor a proper party rather relationship of consumer and service provider is between the claimant and Mehar Muhammad Khalid defendant and it was not the claimant who purchased material from the petitioner rather Mehar Muhammad Khalid used to purchase material from the shop of petitioner. The presence of petitioner is not material and necessary and in his absence the court is able to adjudicate the claim effectually and completely. The petitioner is compelling the claimant to fight a litigation against him and on the other hand, the claimant do not want to fight and do not want to get relief against the petitioner rather the petitioner has jumped into the litigation to sabotage the proceedings of the claim & to deface the relief claimed by the claimant.*

19. *The crux of the above discussion is that the application submitted by the petitioner under Order 1 Rule 10 CPC sans substratum is hereby dismissed and the petitioner is at liberty to approach the court of competent jurisdiction for redressal of his grievance.*

Announced: 22 -05-2017

BAKHT FAKHAR BAHZAD
District & Sessions Judge/
judge Consumer Court Gujrat.

Certificate:-

It is certified that this judgement consists of six pages. Each page has been dictated, read, corrected and signed by me.

Announced: 22 -05-2017

Judge consumer court
GUJRAT.

*Present: Claimant Sarwar Rasheed along with his counsel Mohsin Shahzad Cheema Advocate.
Defendant Muhammad Shabir Warraich along with his counsel Syed Ali Mosa Advocate*

Vide my detailed separate order written in English language of even dated, the claim is partially accepted in view of following terms and conditions:-

1. To return to the claimant price of Battery i.e Rs.9,300/- received from him.
2. To pay Rs.10,000/- as compensation to the claimant for providing defective product
3. Though there is no certificate of payment of counsel fee annexed with the claim but it is evident from the file that legal notice was served by the claimant through his counsel but upon failure of reply, the claimant was forced to approach this court. Therefore the defendant is also directed to pay Rs.10,000/- as lawyer's fee which incurred on the legal proceedings.
4. Claimant has deposited fee of expert as required under section 30 (1) (e) of the Act, and the test/analysis of the product has supported the version of the claimant, therefore, in terms of section 30 (1) (e) the defendant is directed to pay Rs.2,500/- to the claimant.

File be consigned to record room after due completion.

Announced: 22 -05-2017

BAKHT FAKHAR BAHZAD
*District & Sessions Judge/
judge Consumer Court Gujrat.*