

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

CASE NO. 86-2016
 Date of institution: 08-11-2016
 Date of decision: 25-04-2017

Syeda Khadija Gilani advocate, Jinah Block, District Katchery Gujrat.

(Claimant)

Vs

1. *Rashid, Malik Gujrat Shoes, Muslim Bazar, Gujrat.*
2. *Incharge Malazm, S/O unknown, Gujrat Shoes(Children Shoes), Muslim Bazar Gujrat.*

(Defendants)

Present: *Syeda Khadija Gilani claimant along with her counsel Sadia Bano advocate,*
Defendants ex-parte

COMPLAINT/CLAIM UNDER SECTION 25 R/W Ses30 OF PUNJAB CONSUMER PROTECTION ACT,2005

Judgment:

1. *The claimant has not mentioned any particulars of defendants No.2. therefore, his name is deleted from the list of defendants.*
2. *claimant has triggered the machinery of law into motion by filing the instant claim under section 25 of Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity) against the defendant.*
3. *Filtering the necessary detail of the facts which are necessitous to be stated for deciding this claim are that claimant got purchased a pair of shoes for her daughter against Rs.350/- from the defendant who gave assurance to the claimant that he would replace the pair of shoes if there is found any defect. On 10-09-2016, claimant along with her sister came at the shop of defendant and asked him to replace the same as it was not fit with the feet of her daughter upon which defendant become*

furious and misbehaved with her. Due to this situation claimant purse containing Rs.42,000/- also got theft in front of defendant's shop. Claimant has to face mental torture and harassment and due to their conduct she has to feel insult before the many clients and public at large. Feeling annoyed with this situation claimant served legal notice to the defendnats for defective service but of no avail.

4. So, being perplexed, disheveled, distressed and disgruntled from the conduct of the defendant the instant complaint have been filed, seeking the following relief. The details have been mentioned in pare no 6 which is being reproduced as under:-

- i. Damages for physical and mental torture Rs.100,00,000/-*
- ii. Counsel fee Rs.200,000/-*
- iii. Loss in shape of cash Rs.42,000/-*
- iv. Loss due to theft of documents Rs.2,00,000/-*

*5. Upon issuance of notices by this Court, no one appeared on behalf of the defendants nor defendants themselves put up their appearance in the court and on 02-01-2017 they were proceeded ex-parte and the clamant was directed to produce his ex-parte evidence. While appearing in witness box Syeda Khadija Gilani appeared as PW 1 and submitted her affidavit as Ex-P1, Syeda Faiza Gilani stepped in the dock as PW 2 and submitted her affidavit as Ex-P2, the counsel for the complainant tendered the following documentary evidence:-
(i) Copy of legal notice as Mark-PA (ii) acknowledgment due card Ex.P3.*

6. I have heard the arguments advanced by learned counsel for the claimant at length perused the evidence produced by her and have also given my anxious consideration on the fact and circumstance of the case. Needless to add here that rule 14 (5) of the Punjab Consumer Protection Rules, 2009 provides that:-

"If the defendant fails to appear on the day of hearing, the Court may decide the claim ex-parte on the basis of documents available on the record or adjourn it."

7. Before proceedings further it would be appropriate to establish that whether any relationship of consumer and service provider exist between the parties. To conclude this aspect I venture to place on record the definition of consumer as provided in section 2 (c) of the Act which is reproduced as under :-

“consumer” means a person or entity who-

- (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or
- (ii) hires any services for a consideration and includes any beneficiary of such services;

8. Whereas in the Act service provider has been defined under section 2 (k) of the Act which is reproduced as under:-

“services” includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include-

- (i) the rendering of any service under a contract of personal service;
- (ii) the rendering of non-professional services like astrology or palmistry; or
- (iii) a service, the essence of which is to deliver judgment by a court of law or arbitrator;

9. After going through the definition of consumer and service provider it has been established that claimant has purchased the pair of shoes from the defendants for consideration hence she is a consumer within the meaning of 2 (c) of the Act whereas the defendants are service providers as defined under section 2 (K)of the Act.

10. A consumer can reasonably expect when he/she purchases the product or hires services against consideration, those must be of some standards. In the case in hand when defendants have promised to

replace the shoes in case of any defect, then it was duty of the defendants to provide qualitative service to the claimant as per agreement. As earlier mentioned, despite service of notices defendant failed to appear before the Court, by adopting this conduct he has been audaciously defying and eluding the process of law, this gimmick on the part of defendant amounts to sabotaging the judicial proceedings. Such conduct can not be countenanced or allowed to prevail.

11. On the other hand, the claimant has been appearing and clamouring before the Court to prove her claim/complaint. After perusing the contents of the claim, affidavit produced by both the witnesses and documents submitted by the claimant in the shape of documentary evidence the detail of which has already been mentioned in my earlier part of judgment and need not to be reproduced, the claimant has succeeded to establish her claim and there is no rebuttal of the evidence produced by the complainant and I feel no hurdle and hesitation to conclude that the defendant provided the defective product and services to the claimant, made affront and due to which claimant definitely suffered financial loss, mental agony and inconvenience due to providing the defective services. The claimant had also to undergo the travails of the litigation and was also lowered in the public estimation.

12. For what have been discussed in terms of section 30 (1) and section 31 of the Act, this Court issue an order to the defendant to take following steps within one month from today.

- 1. To pay Rs.10,000/- as mental torture and harassment.*
- 2. To pay Rs.42,000/- for loss of cash in stolen purse.*
- 3. As the claimant has not annexed certificate of fee of counsel as required under section 28(3) of PCPA 2005 & Rule 13 of PCPR 2009, therefore, instead of fifty thousands fee of the counsel, the defendants shall pay Rs.10,000/- as fee of lawyer which incurred on the legal proceedings*
- 4. The defendant is also directed to pay Rs.20,000/- (Twenty thousands rupees) to the claimant for lost of precious documents due to his ill-behaviour.*
- 5. The defendant shall collect defected shoes from the*

claimant and replace it with new pair of shoes.

13. *Before parting with this judgment it is warned that if the defendant shall not comply with the order passed by this Court in letter and spirit provisions under sec 32 (2) of the Act shall be invoked besides of execution of the order through the Deputy Commissioner Gujrat/ Collector with full force by using all the means including the use of police force as an arrears of land revenue. There is no need to remember the provisions of section 36 of the Act to the Deputy Commissioner/Collector & DPO, however for their guidance and information sec 36 which is being reproduced as under :-*

Aid to the Consumer Court.- “All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.”

14. *In view of above said provisions of law, copy of this judgment be sent to the Deputy Commissioner/ Collector Gujrat and DPO Gujrat to execute / enforce order in letter and spirit and this order would become final under section 34 of the Act, if the appeal or application if not preferred under Section 33 of the Act and Rule 18 of Punjab Consumer Protection Rules, 2009 in accordance with rules and procedure of Hon’able Lahore High Court, Lahore within one month.*

15. *A duly attested copy of this judgment shall be sent to the defendants through post by Registrar of this Court forthwith. The file of this complaint/ claim be consigned to record room fully page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with rules and orders by Hon’able Lahore High Court Lahore.*

Announced: 25 -04-2017

BAHZAD

*Judge/
Court Gujrat.*

BAKHT FAKHAR

*District & Sessions
judge Consumer*

Certificate:-

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

Announced: 25 -04-2017

Judge consumer court

GUJRAT.

Present: Claimant Awais Ahmad Cheema along with his counsel Ch.
Ijaz Aslam Advocate.
Defendant Muhammad Asrar along with his counsel
Ch.Ghazanfar Mehndi
Acvocate

Vide my detailed separate order written in English language of even dated, the complaint in hand Keeping in view whether the storey narrated in the complaint is genuine or not I think that the claimant has failed to establish relationship as consumer and service provider therefore the instant claim sans substratum is hereby dismissed to be presented at proper forum.

Announced: 13 -04-2017

BAHZAD

Judge/

Court Gujrat.

BAKHT FAKHAR

District & Sessions

judge Consumer