

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

Case No 25-2018

Title. Tahir Ashfaq Vs Tahir Shafi

ORDER:

1. By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (herein after referred "The Act" for brevity) and the Punjab Consumer Protection Rules, 2009 shall be called "The Rules" (for short).

2. Aggrieved by the conduct of the defendant the complainant purported to have filed the instant claim against the defendant urging various relevant facts and legal contentions. The brief facts are as under:-

3. The complainant on 18-12-2016 made an agreement with the defendant for preparing and renovation of his kitchen and paid Rs.190,000/- in this regard to the defendant detail of which is as under

- i. Paid Rs.70,000/- on 18-12-2016
- ii. Paid Rs.50,000/- on 05-01-2017
- iii. Paid Rs.30,000/- on 13-01-2017.
- iv. Paid Rs.40,000/-

As per agreement the defendant has to install PVC Sheets in inner and outer Cabinets of kitchen which is water and dust proof but defendant used Chip Board in Cabinets. The claimant further stated that it was also settled between them that Solid Aluminium will be used in lower portion of kitchen but defendant instead of that used PVC Pipe. Claimant went on to saying that defendant used low quality material in Kitchen's sewerage system which became out of order after two months of completion of work and caused damage of Rs. 9,15,000/- to the claimant. The

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claimant times and again contacted via telephone to the defendant and asked him either replace damaged material as per agreement or compensate him but defendant putting the matter on one pretext or other and ultimately refused to do needful; that due to the conduct and faulty service of the defendant, claimant had to face financial loss and bore mental torture. He served legal notice to the defendant for compensation but of no reply, so feeling disgruntled the instant claim has been filed with the following relief

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| 1. | Actual cost | Rs.1,90,000/- |
| 2. | Mental torture | Rs.5,00,000/- |
| 3. | Damages | 1,95,000/- |
| 4. | Expenses incurred on transportation | Rs.5,000/- |
| 5. | Counsel fee | 25,000/- |
| | Total | 9,15,000/- |

3. The instant complaint was filed on 22-08-2017, in pursuance of notice issued by this court the defendant appeared on 31-10-2017 and he was directed to submit the written statement which he submitted the same on 07-11-2017 and the case was fixed for pretrial settlement and the matter was referred to ADR Centre Gujrat with the consent of both the parties on 09-01-2018 where the compromise was not effected and the reference was received back from worthy District Judge Gujrat on 13-10-2018. The case was fixed for evidence, on three consecutive dates defendant disconnected himself from the proceedings of court and ultimately by not giving further motherly treatment to the defendant, he was proceeded ex-parte on 17-04-2018 due to his continuous non-appearance before the court and the case was fixed for recording the ex-parte evidence of the complainant.

4. Before further proceedings and concluding on this aspect I am constrained to observe that the conduct of the defendant remained highly deplorable before the court. He remained engaged in playing hide and seeks with


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the court. Due to the conduct of the defendant, the proceedings in the instant claim got arrested as if "TIME" has been arrested despite giving so many opportunities to the defendant to appear before the court but the defendant endeavored very hard to master the art of prolonging the litigation and now is the time to check and control the menace of virus of taking adjournment. Such type of conduct can not be encouraged to prevail. This court hoping that all owe of defendant would be over and the diseases of adjourning the matter affecting the marrows of litigation would be kept at bay, waited for his appearance and showed reluctance not to proceed ex-parte, notwithstanding the unwarranted indulgence shown, the defendant remained adamant and throughout proceedings thought it wise not to participate in the proceedings. I have narrated all the factual story to conclude that in this case, it can indubitably be stated that the defendant has acted in a manner to cause colossal insult to justice.

5. Let us take a little pause here to proceed further with the matter. As the earlier mentioned that the defendant disconnected himself from the proceedings of court and the court while exercising powers of Rule 14(5) of Punjab Consumer Protection Rules, 2009 proceeded ex-parte against the defendant and the claimant was asked to produce his ex-parte evidence and in pursuance of which claimant himself appeared as PW1 and submitted his affidavit as Ex-P1. In documentary evidence counsel for the claimant produced (i) copy of legal notice as Mark-PA (ii) envelope of legal notice (received back) as Ex-P2 (iii) payment receipt dated 18-12-2016 as Ex.P3 (iv) three receipts (comparataive prices kitchen material items) Ex-P4/1-3.

6. The complainant Tahir Ashfaq while appearing as PW-1 submitted affidavit as Ex.P1 wherein he reiterated the same facts as mentioned in the complaint. In documentary evidence he produced (i) copy of legal notice as Mark-PA (ii) envelope of legal notice (received back) as Ex-P2 (iii) payment receipt dated 18-12-2016 as Ex.P3 (iv) three receipts (comparative prices kitchen material items)

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Ex-P4/1-3. There is nothing available on the record to rebut the evidence of the complainant as the respondent was proceeded against *ex-parte*. So, this court has left no option except to accept the claim of complainant. So far as the question of mental agony and harassment is concerned, the complainant has made oral assertion which are un rebuttable

7. Perusal of claim and other documents shows that Tahir Shafi Mirza is a carpenter and provides services for the wooden work. The receipts submitted by the claimant shows that Rs.1,90,000/- as price of material has been received by the defendant. In this backdrop Tahir Shafi Mirza is a service provider as contemplated under section 2(k) of Punjab Consumer Protection Act, 2005. Tahir Ashfaq is a consumer who also falls within the definition of consumer as provided as under:-

(c) "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. Defendants is a carpenter and provides services for the wooden works so under section 27 of the act claimant has absolute right to file the claim in this court because he has made an agreement for the renovation his kitchen and had paid Rs. 1,90,000/- for this purpose. Postal receipts annexed with the claim clearly indicate that legal notice was dispatched by the claimant at his address which has even otherwise been admitted by defendant in his written statement. The factum of Agreement between the parties is also admitted fact. The claimant in clear words was beneficiary of services which was to be provided by the defendant. Therefore, in terms of section 2 (c) of the Act, claimant is a consumer.

[Signature]
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9. Adverting to the definition of Service, 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;

10. From over all survey of definition of "Consumer" and "Service", the relationship between the parties as "Consumer" Service provider has been established.

11. After receiving payment from the claimant it was the duty of defendant to give settled services to the claimant instead he provided faulty services. In pursuance of notices issued by this court, the defendant appeared and thereafter disconnected him from the proceedings of the court. Keeping in view his conduct it shall be presumed that he has nothing to say in rebuttal of claim and he has failed to perform his duty and obligation as per commitment. In view of the discussion I have no hesitation to say that the defendant is responsible for providing faulty services which caused monetary damages to the claimant and claimant has to undergo mental agonies.

12. Whatever have been discussed above, in the light of that, this claim is partially accepted, I therefore, in pursuance of section 31 of The Act, issue an order to the defendant directing him to take following actions within one month from today:-


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1. To return actual Cost i.e Rs.1,90,000/-
2. To pay one lac as compensation to the claimant.
3. To pay Rs.25,000/- to the claimant as counsel fee including litigation charges.

13. As per section 34 of Punjab Consumer Protection Act, 2005, order of this court shall be final if no appeal has been preferred within statutory period.

14. As per rule 17 of Punjab Consumer Protection Rules, 2009, Registrar of this court is directed that a copy of this order be communicated to the parties through registered post free of charges.

16. registrar is further directed that in terms of section 25 of the Rules a copy of this final order be sent to Provincial Consumer Protection Council through e-mail for publication on its official website for information to the public at large. File be consigned to record room after necessary completion.

Announced: 15-05-2018


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Certificate:-

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

Announced: 15-05-2018


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