

**In The Court Of Syed Maruf Ahmedali Presiding Officer  
District & Sessions Judge District Consumer Court  
Lahore.**

**Talib Hussain V/S Nestle Milk Pakistan Pvt Ltd**

**Order.**

The Petitioner Talib Hussain has filed a Complaint for recovery of damages amounting to Rs. 900325/- under Section 25 of the Punjab Consumer Protection Act 2005 against the Respondent.

2            Brief facts, according to the Petition are that on 24.02.2008 the Petitioner purchased Quarter of Nestle Milk Pack consisting of 21 Packets of quarter litre Milk Pack for an amount of Rs. 325/- from Respondent No 2. It is alleged that when on 06.05.2008 the Petitioner used the said Milk the same was spoiled. Despite the fact that the expiry date given on the Milk Packs was 23.05.2008. As a result the Petitioner and his family members suffered from Nausea. The Petitioner through his counsel on 13.05.2008 served a Legal Notice to the Respondent in which he had demanded damages amounting to Rs. 900325/- the detail of which is mentioned on Para No-8 of the Petition. Hence this Petition.

3            The Respondents were summoned. Respondent No.1 contested the claim through his Written Statement. Respondent No.2 was proceeded against Ex-Parte on 05.06.2008. The Petitioner in order to prove his case appeared in the Witness Box as PW-1 and produced Receipt of the Milk Pack Mark /A Receipt of Legal Notice Mark B and Mark C. On the application of the Respondent the Public Analyst was summoned as CW-1. The Respondent produced Laeeq Ahmed Gill as RW-1 and tendered in evidence documents Mark R/1 Ex-R/2 and Ex-R/3. (under objection) by the counsel for the Petitioner.

4            It is contended by counsel for the Petitioner that it has been proved by CW-1 the Public Analyst whose report is Ex-C/1, that the Milk in the Milk Packs was sour. The Packet of

Nestle Milk Packs C/2 is admitted by RW-1 Laeeq Ahmed Gill Manager of the Respondent Company. He has further contended that the Petitioner has suffered damages due to mental tension and ailment and is entitled to damages and has prayed that his claim be accepted.

5           On the other hand, the counsel for the Respondent has contended that there are major contradictions in the Petition and the evidence given by the Petitioner as PW-1 He has mentioned 21 quarter Litre Packets in his Petition where as 27 packets in his evidence. He has further contended that the manufacturing date on the Milk Packs is 23.02.2008 by no stretch of imagination the Milk Packs could not be put to sale on 24.02.2008 as the release date of the Batch Code is 29.02.2008 according to Mark R/1.He has further contended that receipt Mark A of the Milk Pack is forged which is shows 24.02.2008 as the purchase date. The brand of the Milk is not mentioned on it, nor the name of the Petitioner. He has further contended that the Public Analyst has failed to carry out Chemicals Analysis of the Milk Packs in accordance with law. He has further contended that the Petitioner has failed to prove his case as he has not suffered any damages and has prayed that this Petition be dismissed.

6           After hearing the arguments of both the learned counsel for the Parties and perusing the record. According to the evidence given by PW-1 Talib Hussain who is Petitioner in this case. He has stated that he has purchased Nestle Milk Packs of 250 ML consisting of 27 packets on 24.02.2008 for an amount of Rs. 325/- and had produced receipt Mark A and has stated that the Milk was sour in 17 packets when it was used on 06.05.2008.Expiry date given on the Milk Packs is 23.05.2008. On the other hand RW-1 Laeeq Ahmed Gill the (Quality Assurance Manager) who appeared on behalf of the Respondent has admitted that the Packet of quarter Milk Pack C/2 is of their Company and has also admitted that the manufacturing date is 23.02.2008 and expiry date is 23.05.2008.He has also stated during cross examination that no one can prepare fake packets of their Milk Packs. CW-1 Public Analyst has proved his report Ex-

C/1 in which it has been specifically mentioned that the Milk in the Packet was sour before the expiry date.

7 The objection of the counsel for the Respondent that the date of purchase of the Milk Packs i.e. 24.02.2008 and Milk brand has not been mentioned on the receipt Mark A is of no avail, as it has not been denied by RW-1 during evidence that the Milk Packs purchased by the Petitioner is not of Nestle Company nor it has been denied during evidence by the Respondent that the Milk was not found sour before the expiry date i.e. 23.05.2008.

8 The documents produced by the Respondent through his counsel on 06.11.2008 at the time of closing of evidence i.e. Mark R/1, Ex-R/2 and Ex-R/3 were neither relied upon by the Respondent nor attached with their Written Statement nor were tendered during evidence of RW-1. Despite the fact that these documents were in their possession. It appears that these documents were prepared as an after thought. The Petitioner has failed to prove that he had suffered any the date of this Order. damages as envisaged under Section 10 of the Punjab Consumer Protection Act 2005 .However the product i.e. Milk Packs purchased by the Petitioner of Nestle Milk Packs were defective.

In view of the afore said reasons this Petition is accepted. Respondent No.1 is directed to refund the price of the Milk Packs amounting to Rs. 325 /- is also burdened with costs of Rs. 5000/- which shall be paid by Respondent No.1 within ten days from

File be consigned to record room after due completion.

**Announced**  
**20.11.2008**

**Presiding Officer**  
**District Consumer Court**  
**Lahore.**

**Certificate**

Certified that this Order consist of Four (4) pages which have been dictated, read, corrected and signed by me.

**Announced**  
**20.11.2008**

**Presiding Officer**  
**District Consumer Court**  
**Lahore.**