

IN THE COURT OF SOHAIB AHMED RUMI
DISTRICT & SESSIONS JUDGE/PRESIDING OFFICER
DISTRICT CONSUMER COURT
SIALKOT/NAROWAL.



Case No. 59/2017

Date of Institution: 20-07-2017.

Date of Decision: 02.04.2018

Tariq Hussain S/O Muhammad Sadiq R/O Chaprar Tehsil
and District, Sialkot.

(Consumer/Claimant)

Versus

Mistree Iftekhhar Hussain S/O Ali Ahmad Jutt R/O Chaprar
Tehsil and District, Sialkot.

(Defendant/Service provider)

CLAIM UNDER SEC. 25 OF THE PUNJAB CONSUMER
PROTECTION ACT, 2005.

JUDGMENT:

Brief facts of the case in hand launched under Sec. 25 of the Punjab Consumer Protection Act, 2005 leading to its disposal are that, claimant, Tariq Hussain hired defendant's services for the construction of two separate portions with boundary walls and shops at one kanal land. Claimant spent an amount of Rs. 90,00,000/- for said construction and paid Rs. 16,51,000/- to the defendant for skilled services. After completion of construction the slab of roof was found to be tilted and cracked. Similarly walls of the building were tilted. Defendant committed professional negligence and applied untrained and unskilled masons who did not utilize iron, cement and bricks properly, resulting into cracks in the construction work. A pre requisite legal notice dated 20.06.2017 was served upon the defendant

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Attested

Registrar 08-12-18
District Consumer Court
Sialkot

District & Sessions Judge/
Presiding Officer
District Consumer Court
Sialkot

Tariq Hussain VS Mistree Iftekhhar Hussain



but no response thereof, hence, this claim for the recovery of damages of Rs. 1,57,86,000/-.

2. This Court while taking cognizance of the matter summoned defendant who contested and defended the allegations leveled against him by submitting his reply.

3. Evidence of the parties was recorded. The claimant, Tariq Hussain in order to discharge onus-probandy put his appearance in the Court as P.W.1. He produced Muhammad Javed as P.W.2 and Allah Ditta as P.W.3. In documentary evidence he produced affidavits in the shape of Exh.P1 to Exh.P3. The learned counsel for the claimant in his own statement while submitting postal receipt for issuance of legal notice Exh.P4, copy of the legal notice Mark-A, original snaps of disputed building Exh.P.5 to Exh.P.16. Copy of the register regarding payment of labour charges and payment to defendants with signatures etc (09 pages) as Mark-B closed his oral and documentary evidence. From the respondent side special power of attorney, Ghulam Murtaza appeared as R.W.1 he submitted his affidavit in evidence Exh-R.1, verified its contents and signature, he submitted special power of attorney R.3. Dil Mir Hussain also appeared as R.W.2 who produced his affidavit in evidence as Exh-R.2 and verified its contents with signature. Defendant counsel produced original postal receipt regarding dispatch of reply of legal notice Exh-R.3, copy of reply of legal notice as Mark-R.A, copy of map as Mark-R.B and closed his evidence.

4. Arguments heard. Record perused.

5. Contention of learned counsel for the consumer/claimant is that he hired services of defendant

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District Consumer Court
Sialkot

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Tariq Hussain

VS

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for construction of his buildings over 01 kanal piece of land. The construction was comprising of two portions which was agreed against a consideration of Rs. 16,51,000/-. The complainant spent Rs. 90,00,000/- on purchase of building material but due to the defective and poor services of defendant said building badly damaged, as there are cracks in the roof and walls and same have also been tinted from different sides.

6. Evidence of the claimant is comprising of statement Exh-P.1, statement of Muhammad Javied Exh-P.2 and statement of Allah Ditta Exh-P.3, in the above said statements contents of the plaint have been repeated based on allegations. The factual position about the defects alleged at site has not been elaborated by producing any expert evidence. To establish the case by producing credible evidence is the exclusive duty of the claimant. During the cross examination claimant admitted that agreement with the defendant was to raise grey structure whereas, at present claimant has completed the finishing process of the building. It is not ascertainable from the available evidence as to what kind of defects are present at site and what should be the costs of its repair. Even the damages as claimed cannot be assessed without opinion of a technical expert. However, Qamar Abbas counsel for the claimant while closing the evidence got recorded his statement that Court can appoint commission for calculating the damages. It is settled principle of law that Court by itself cannot collect evidence by appointing local commission or any other such mean, local commission can

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District Consumer Court
District

District & Sessions Judge
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only be provided for elaboration of the evidence already present on record. With the suggestion or advice of learned counsel for the claimant, Court cannot step into the shoes of complainant for collection of evidence from the site. Neither any expert witness who has inspected the building and recorded the defects in construction has been produced nor any application in a proper form 9 form was ever filed by claimant. The kind of cracks in the slab of the roof, walls, tilt in the walls, how many they are and to what extent cannot be imagined while sitting in the Court. Such an intricacies should have been brought with all its delicacies by the complainant himself on record. In the absence of which, defective services and consequential damages cannot be determined on the bases of surmises and conjectures. The complaint is therefore declined for lack of evidence. There is no order as to costs. File be consigned to the record room after its due completion.

Announced:
02-04-2018.

[Signature]
Presiding Officer
District Consumer Court
Sialkot/Narowal.

CERTIFICATE

Certified that this order contains four pages and each of pages is dictated, corrected and signed by me.

Announced:
02-04-2018.



[Signature]
Presiding Officer
District Consumer Court
Sialkot/Narowal.

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