

**In the Court of Tariq Masood Bhatti Presiding Officer/
District & Sessions Judge, District Consumer Court,
Bahawalpur**

Zaifer Agro Chemical Vs President, Real Banking etc.

Case No. 3511/14
Date of Institution: 22.10.2014
Date of decision: 09.03.2015

PETITION UNDER PUNJAB CONSUMER PROTECTION ACT, 2005

Order:-

Contention of the claimant vide his instant petition is that Zaifer Agro Chemical is a private limited company so is suing through his Director Khawaja Hidayat Ullah who has the powers to sue.

Contention of claimant in brief is that he got deposited a cheque No.2406994 worth Rs.14,50,000/- in his account No.08267900933903 being maintained at HBL Ahmed Pur East Branch (respondent No.3) but the amount was not deposited in his account while there was absolutely no fault in the cheque in question.

Respondent No.3 was complained that amount has not yet been added in his account through a letter dated 20.03.2014 and then through a letter dated 12.04.2014; Letters were got issued even through counsel to the respondents No.3 & 4 on 04.06.2014 and 25.07.2014 but neither the amount was transferred in his account nor the cheque in question was returned to him. In this way, the respondent has provided Faulty Service.

Due legal notice has been served through registered A.D post but acknowledgement receipt has not yet been received back nor reply of notice has been received, hence the petition for recovery of his cheque or its deposited its money in the tune of Rs.14,50,000/- in the account mentioned supra and the respondent be also burdened with compensatory cost in the tune of Rs.7,00,000/- with profit of the cheque at the prevailing permissible rates till realization of the amount.

Respondents contested the petition on legal and factual grounds submitting that claimant has no cause of action against the answering respondents and it is not a case of any sort of Faulty Service, so the Court lacks jurisdiction; claimant has not

come to the Court with clean hands because he has taken a loan from HBL Ghala Mandi Branch, Bahawalpur and is just blackmailing the bank and to get some benefits, he has moved the instant claim with malafide intention.

It was maintained that Courier Service Company was necessary and proper party alongwith UBL, Bagh-o-Bahar Branch Khanpur, District Rahim Yar khan who has not been impleaded.

It was maintained that respondents has sent the cheque to UBL, Bagh-o-Bahar Branch Khanpur, District Rahim Yar khan through Deltex Courier Company and said Courier was duly received by said UBL Branch, but the cheque had been misplaced with connivance of claimant and UBL, Bagh-o-Bahar Branch Khanpur, District Rahim Yar khan just to blackmail answering respondents.

It was maintained that no doubt cheque in question were duly deposited with them on 23.04.2014 which pertains to UBL, Bagh-o-Bahar Branch Khanpur, District Rahim Yar khan, and claimant has deposited the same in his account at HBL Ahmed pur Sharqia Branch. Respondent No.3 & 4 duly received the cheque and sent the same to concerned UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan, vide OBC No.23001 dated 23.01.2014 through Deltex Courier Service Collection and the same was delivered by said Courier Company in the said branch on 03.02.2014. UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan did not transfer the money and did not deposit the same in the account of claimant at which respondent No.3 & 4 contacted them on 26.02.2014 and 25.03.2014 and then on 04.04.2014 through different reminders but UBL branch did not bother. That in fact UBL has received the courier since 03.02.2014 but there version is that it was without the cheque, while contention of respondent is that they duly put the cheque in envelope and duly sealed the same and handed over the same to Deltex Courier Service.

That a written complaint has duly been served to UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan by the respondent No.3 & 4 so there is no fault on the part of respondents and in this way, the petition is not sustainable.

Both the parties have lead their pro and contra affidavit as their evidence in support of their respective version; claimant has also submitted the deposit slip, copy of legal notice served to all the four respondents with postal receipt.

Lengthy arguments of Ch. Muhammad Saleem learned advocate on behalf of claimant and that of Ch. Riaz Ahmed learned advocate on behalf of respondent have been heard, record perused. Ch. Muhammad Saleem has submitted written arguments also.

From careful perusal of record with valuable assistance of learned counsels for the parties and found that it has been established that cheque in question was duly deposited by the claimant in his account being maintained at HBL Ahmed pur Sharqia Branch, and respondent admitted that had sent the cheque in question to

concerned UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan, through Deltex Courier Company.

Version of respondent is that infact claimant was bound to impleaded UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan, and Deltex Courier Service Company in the instant petition because they were necessary and proper parties and to enough the Court to reach some just conclusion in light of written replies of above mentioned parties, if their replies had are on record.

Contention of the learned counsel for the claimant in response is that they had deposited the cheque with HBL Ahmed Pur Sharqia Branch and now it was sole responsibility of the above said branch to collect the money from UBL Branch and deposit the same in the account of the claimant and he was not supposed to implead the above mentioned parties.

The cheque had been sent by HBL Ahmed Pur Sharqia Branch to UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan through Deltex Courier Service and if the cheque has been misplaced, that was fault at the part of HBL Ahmed Pur Sharqia Branch and not a fault on the part of claimant and he was not supposed.

Claimant was not supposed to implead UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan or Deltex Courier Service and if they were to be impleaded, then that was the job of HBL to sue them.

No action what so ever has been taken by the respondents in this regard so far.

The arguments of learned counsel for respondent that infact the cheque in question has never been utilized any where and infact it is with the claimant himself and not with the answering respondents and he is just blackmailing the bank with connivance of UBL, Bagh-o-Bahar Branch Khanpur, District Rahim yar khan, is concerned, I am of the view that arguments is not so attractive because respondents has himself admitted that claimant has deposited the cheque with their branch. When the cheque has been deposited then how it can be said that it was misappropriated by the claimant himself with connivance of UBL Branch.

It was prime duty of the answering respondents to sue UBL Branch and Deltex Courier Service or to inquire the matter at their end to ascertain that how the cheque misplaced.

In my view, it is a proved case of Faulty Service on the part of respondent, so I have been left with no option except to decide the matter in favour of the claimant asking the concerned HBL Ahmed Pur Sharqia Branch, who is respondent No.3 in this case, to add and deposit the amount of cheque in question in the account of claimant with usual permissible profit or to deliver/return the cheque in question to the claimant.

It is established that it is a proved case of “Faulty Service” due to which claimant has certainly suffered mental agony, so a sum of Rs.50,000/- is hereby assessed as compensation for the same and as a cost of litigation. Decided accordingly.

File be consigned.

Tariq Masood Bhatti
Presiding Officer/District & Sessions Judge
Consumer Court, Bahawalpur