

**IN THE COURT OF MUHAMMAD SARFRAZ AKHTAR  
DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,  
DISRICT CONSUMER COURT MANDI BAHA-UD-DIN**

Case No.	27 of 2018
Date of institution	22.09.2018
Date of decision	21.12.2018

Altaf Hussain Bosal son of Muhammad Akram, Caste Gondal, resident of Jand Bosal, Tehsil Malikwal, District Mandi Baha-ud-Din.

Vs.

Khaadi, Shop No. G-01, Hakim Mall Jail Road, Mandi Baha-ud-Din.

1. Muhammad Rauf Manager;
2. Nafees Ahmad Assistant Manager;
3. Hamza Salesman.

**ORDER:**

The stance of Altaf Hussain Bosal claimant, is that he purchased lady suite from Khaadi Shop on 11.08.2018 for consideration of Rs.5800/- that become defective in the first washing. Upon complaint it was told that the product shall be sent to Head Office Karachi and the claimant shall be informed within 07 days. Defective product was returned to the defendants vide receipt dated 12.09.2018 (Ex.PC). On 15.09.2018 the claimant was informed on telephone by one of the defendants Hamza Salesman that his claim has been accepted and now claimant can purchase alternate product. On visit to shop of defendants on 16.09.2018 he was asked that he can make alternate purchase merely for Rs.3400/- Due to difference in the price of first product and the offer of alternate product the claimant objected whereupon he was maltreated and was also threatened. Legal notice (Ex.PD/1) through registered post (Ex.PD) vide receipt (Ex.PD/2) was sent on

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17.09.2018 that the defendants refused to receive. As the grievance of the claimant was not redressed, instant complaint under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been filed. The claimant suffered mental agony at the hands of defendants in addition to loss of time and money spent on visit to shop. The claimant now claims return of price of the product as well as compensation of Rs.200,000/-

2. Defendant No. 1 & 2 initially avoided the process. Their attendance was procured by issuing process in line with section 94 of the Code of Civil Procedure and they were served with notices to show cause as to why they may not be proceeded against for non-compliance of process. At that time defendants maintained that the claim of claimant has already been allowed by the company but the dispute is with respect to alternate price of the product. Subsequently reply to show cause notice was filed and time to sort out solution and otherwise to file written statement was sought. Fresh Power of Attorney as well as written statement on behalf of defendants was submitted on 15.10.2018.

3. As many as 13 preliminary objections in an evasive manner were taken by the defendants. Even some objections were self-contradictory or inconsistent with the other like objections at para-5 and para-9 of the preliminary objections in the written statement. Para-5 suggests that the claim is pre-mature whereas para-9 suggests that the claim is hopelessly barred by limitation. On merits evasive stance has been taken in the written statement wherein neither purchase of product and return thereof by the claimant has been conceded nor denied by the defendants. It was maintained that no notice was served upon the defendants.

4. After submission of written statement during efforts of reconciliation/settlement on 16.10.2018 Manager and Salesman (defendant No. 1 & 3) maintained that in fact the claim of claimant

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was approved by the company but alternate price was not acceptable to the claimant.

5. Thereafter the claimant was asked to produce his evidence. On four consecutive dates i.e., 23.10.2018, 25.10.2018, 5.11.2018 and 6.11.2018 witnesses were produced by the claimant but the defendants opted all the tools including non-appearance, appearance at the closing hour or filing of misc. application. On 6.11.2018 when entire evidence of the claimant was in attendance an application was submitted with the stance that the complaint is not maintainable. It was maintain that mandatory time period as laid down in section 28 of the Punjab Consumer Protection Act 2005 has not been observed and without affording requisite fifteen days complaint has been filed. The application was disposed of on the same day after hearing the arguments and it was held that the contention raised by the learned counsel for the defendants, in view of claim as put forwarded by the claimant has become a mixed question of law and facts that requires evidence and further probed and as such cannot be dealt merely on application as being desired by learned counsel for the defendant. The application was disposed of with the observation that this assertion shall be taken up in due course.

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6. Before proceeding further at this stage the objection mentioned supra is being taken up. At the time of final arguments once again learned counsel for the defendants maintained that requisite period of 15 days after notice was not elapsed when instant complaint was filed by the claimant. Further maintained that had those 15 days elapsed, the matter might have been resolved by the company.

7. As mentioned supra, in the written statement inconsistent pleas in preliminary objections especially in para-5 & 9 thereof were taken. Then on merits in para-3 of written statement it is maintained that "No notice as mandated under the Act of 2005 has ever been served". This simply means that on one hand

defendants are taking the plea that no notice was served and on the other hand it is being maintained that requisite period of 15 days after notice was not elapsed when complaint was filed and had those 15 days elapsed the matter might have been resolved by the company. This is a case of approbate and reprobate that is not permissible. One cannot be allowed to take two inconsistent pleas. Once it is established on the basis of material available on record that the defendants refused to receive the notice, the only option left with the claimant to file complaint that was to be filed within 30 days of arising of cause of action. That has been done by the claimant. The objection raised by the defendants in their above mentioned misc. application is turned down.

8. Again when the entire evidence of the claimant was in attendance another application for analysis of the product from PCSIR Lahore was submitted that was disposed of vide detailed order on 4.12.2018 wherein it was held that when the defendants at pre-trial reconciliation maintained that the company allowed the claim of claimant but only dispute was with regard to quantum of amount. After taking this stance, filing of application for sending the product that is already in possession of defendants for chemical analysis would be nothing but mockery of proceedings.

9. In the evidence claimant himself appeared as PW.1 and also produced Moazam Iqbal PW.2. In the documentary evidence affidavits Ex.PA & Ex.PB whereas Alteration Slip dated 12.9.2018 as Ex.PC, original postal envelope containing refusal to receive report Ex.PD, original notice that was retrieved from the envelope at the time of producing in evidence as Ex.PD/1 and postal receipt Ex.PD/2 were produced. On the other hand Muhammad Rauf Manager one of the defendants appeared as DW.1 and produced affidavit Ex.DA. In documentary evidence suit as Ex.DB, Care Instruction slip/leaflet Ex.DC, specimen receipt of sale containing return and exchange policy Mark.A were produced.

10 PW.1 in his affidavit Ex.PA supported the stance mentioned in the complaint. In cross examination upon questions

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put by learned counsel for defendants replied that he issued notice to the defendants wherein the address of Khaadi is also mentioned; notice was not sent to manufacturer; that un-stitched suit was purchased; it was not washed prior to getting the same stitched; it was washed after 15 days; denied for want of knowledge as to who firstly iron the suit, what detergent was used for washing, where it was dried, which bleach was used in washing. Further replied that the matter with respect to threats was not reported to any law enforcement agency and he did not go to any doctor for treatment regarding mental agony. The affidavit of PW.2 is regarding matter that cropped during pendency of this complaint and as such his affidavit and cross examination being not related to the issue prevailing at the time of filing of the complaint need no discussion.

11. The affidavit submitted by DW.1 as Ex.DA does not bear his signature or thumb impression. Even verification of the same has also not been signed by DW.1. Although at the bottom of affidavit it is mentioned that identified by Awais Umar Advocate but even there is no signature of identification. Rather merely a stamp of "ATTESTED" of an Oath Commissioner has been affixed on the affidavit.

12. Notwithstanding the above mentioned aspects, in the contents of affidavit a new plea inconsistent with the written statement and what was maintained by him at the time pre-trial reconciliation effort has been taken. In the affidavit it is stated that the claimant did not follow the instructions mentioned in the manual and the product was not analyzed by the company. In his cross examination DW.1 replied that he do not remember if any suit was purchased by the claimant on 11.8.2018; conceded that the suit was returned but do not remember if it was return on 12.9.2018; conceded that Hamza Salesman contacted the claimant on telephone but it was not told that the claim of the claimant was allowed by the company rather merely it was informed that the claimant may purchase alternate product as per policy of company in the same price in which it was purchased.

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13. In the final arguments learned counsel for the claimant reiterated the stance mentioned in the complaint. Learned counsel for the defendants on the other hand argued that the complaint is pre-mature as it was filed prior to elapse of 15 days of notice; the complaint is not maintainable as it is not filed against the manufacturer; no notice was issued to Khaadi; instructions contained in the manual were not followed by the claimant himself and he is at fault; fault can also be attributed to tailor; no certificate regarding mental agony was produced by the claimant; the matter of alleged threats not reported to the law enforcement agency. All these aspects warrants dismissal of the complaint.

14. Firstly, the question of maintainability regarding time period of notice and filing of complaint, that has already been dealt supra. As regard non issuance of notice to the company, the company in itself is not a natural person and acts through its agents. The Manager, Assistant Manager and Salesman are representing the company and are running the Khaadi shop. The notice was sent on the address mentioned on Ex.PC. The complaint has also been filed against Khaadi and above mentioned functionaries as is evident from the description of the parties given at the very beginning of the complaint. As such, even this objection is of no help to the defendants and no premium can be extended on this score.

15. Coming to merits of the case, evidently the stance of defendants before the court, in their written statement, in their misc. applications, during cross examination on PWs, in affidavit of DW.1 and in the arguments of learned defense counsel not in consonance with each other.

16. The question in the given situation before the court is what to do if the stance of counsel is inconsistent with that of his client? What if the client who is party to lis maintain before the court that the claim of the claimant was allowed by the company but there was dispute on alternate price or quantum of

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compensation but the counsel indulged in to issues that the product was not faulty and it was claimant who did not get stitched the cloth from the tailor of defendant or did not wash the cloth with the detergent told by the defendant or claimant did not used bleach of recommended quantity or the claimant did not utilized recommended heat of iron?. Again what to do if in the written statement in an evasive manner inconsistent pleas were taken and then ignoring the same an attempt to divert the case into yet another direction during cross examination is made?

17. No wonder as to how a petty matter regarding an initial dispute of Rs.2400/- consumed 3 months of the parties in court proceedings. That too when even without availing any legal assistant the contesting defendants on the very first date of hearing maintained that the claim of the claimant was allowed by the company and claimant was allowed to purchase alternate product in a specific amount. But then it was all that was prior to availing any legal assistance by the defendants.

18. The law with respect to estoppel as well as pleadings is clear. On one hand a party cannot be permitted to take stance contradictory to the admission made before the court under the rule of estoppel. Again party is bound by its pleading and cannot raise its case contradictory to or beyond the scope of what is mentioned in the pleadings. In the instant case both these legal dictums have been violated by the defendants.

19. The material brought on record reflects that the complained product was returned to the defendants on 12.9.2018 and receipt Ex.PC was issued to the claimant. Subsequently, as even conceded by DW.1 in cross examination Hamza Salesman one of the defendants made telephonic call to the claimant. Though now in cross examination the stance of DW.1 is that call was made for intimation regarding alternate purchase. That call as per claimant was made on 15.9.2018 and subsequently on 16.9.2018 claimant visited the shop of defendant. Obviously after checking

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the quality of the product and checking the fault reported by the claimant to the company and satisfying itself in this respect, the claim of the claimant was acceded and he was allowed to purchase alternate product.

20. There is no dispute in between the adversaries that there is a defect in the product sold to the claimant by the defendants. Though now it is being argued on behalf of the defendants that the defect occurred due to the fault of the claimant who allegedly did not follow the instructions. But this was not the stance of the defendant at the first appearance as well as in pre-trial reconciliation effort mentioned supra. Further no such plea was taken in the written statement. As such, the arguments advanced in this respect is without any basis or force and cannot be permitted to frustrate the very basis of jurisprudence regarding admission/estoppel.

21. Evidently, the claimant has been forced to indulge in this legal process to seek remedy that could have been amicably settled. Again the matter could have been resolved at the very initial stage of the proceedings in the court, but the situation mentioned supra reflect that how the proceedings were prolonged in a petty matter. It is the all due to the conduct of the defendants that the claimant suffered agony of proceedings. This aspect cannot and must not be overlooked.

22. In the above mentioned scenario when the claimant in his evidence has substantiated the stance, the liability of the defendants company and its representatives in respect of defective product cannot be avoided. It was the duty of defendant to provide defect free product and even if it became defective the defendants were bound to either get it replaced or receive it back and to return price thereof to claimant. Although as mentioned supra that the stance of Manager and Salesman before the court right from first appearance was that claim of the claimant was allowed by the company and he was offered alternate purchase, yet it was not

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materialized due to dispute regarding quantum of alternate price. That was not done at the relevant time causing unrest and agony to the claimant. Even in affidavit and in cross examination DW.1 tried his best to avoid the admission already made during the proceedings. The ground taken in the written statement in light of above discussion being evasive one is not sufficient to avoid liability for defective product within the meanings of section 4 or for that matter to avoid liability for defective or faulty service within the meanings of section 13 of the Act *ibid*.

23. In view of the above there is no reason to refuse the claim in this case. At the same time it is relevant to see as to what extent relief can be accorded to claimant. Rs. 200,000/- (two lacs) has been demanded as compensation and damages in addition to return of price of the product and other charges. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping in view facts and circumstances of transaction in question and product which was sold. Further conduct of the defendants is also to be seen. Evidently, at the very inception claim of the claimant was acceded and allowed by the company as maintained by above mentioned functionaries before the court on first appearance and then during pre-trial reconciliation proceedings. As such, to the extent of fault in the product and compensation thereof for other expenses including stitching etc. the liability of M/S Khaadi is restricted to the extent of price of the product and stitching charges equal to the price of product. In this manner M/S Khaadi is held responsible to pay an amount of Rs.5800/- (price of the product) and an amount of Rs.5800/- (stitching charges) i.e, total amount of Rs. 11600/-.

24. As regard the conduct of Manager Muhammad Rauf one of the defendants who appeared as DW.1, in view of above mentioned factors especially when he while appearing in the court during pre-trial reconciliation efforts took specific stance that the claim of the claimant was allowed by the company and then in the

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written statement and while appearing as DW.1 took contradictory stance, his conduct in causing mental and physical agony cannot be over looked. Considering the facts of this case the appropriate compensation for claimant against the Manager Muhammad Rauf is assessed at Rs. 25,000/- (twenty five thousand).

25. Therefore, in terms of section 31 of the Act, I issue an order and direct:-

- I. M/S Khaadi to pay to the claimant Rs.11600/- being price of the suit and stitching charges within fifteen days starting from today; and
- II. Muhammad Rauf Manager M/S Khaadi to pay Rs.25,000/- (Twenty five thousand) as compensation to claimant for agony suffered by him due to conduct and behavior of said defendant.

26. In case of failure to comply with the order, the defendants shall have to face the consequences mentioned in section 32(2) of the Act *ibid*. Copy of the order be provided to the adversaries in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this Court shall transmit copy of this order for the purpose of Rule 25 of the Rules *ibid*. Order accordingly. File be consigned.



Announced  
21.12.2018.

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Certified that this Order consists of ten (10) pages and each page has been dictated, read, corrected and signed by me.

Dated: 21.12.2018

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