

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

Case No. 35 of 2018  
Date of institution 19.10.2018  
Date of decision 05.01.2019

Rasheed Ahmad son of Jan Muhammad, resident of Islami Mohalla, Malikwal, District Mandi Baha-ud-Din.

Vs.

Adnan Fridge & AC Centre Malikwal through Aziz Ahmad son of Muhammad Bashir, near old Grain Market, Malikwal, District Mandi Baha-ud-Din.

05.01.2019

**Present:** Mr. Waqas Azmat Advocate counsel for claimant alongwith Rasheed Ahmad Claimant with his son Imran Ahmad.

Mr. Abdul Wajid Shehzad Advocate counsel for the defendant alongwith Aziz Ahmad Defendant.

Arguments heard.

**ORDER:**

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by Rasheed Ahmad claimant against Adnan & Fridge Centre Malikwal through Aziz Ahmad defendant. The claimant maintain that on 06.04.2018 a refrigerator for repairing was handed over to defendant who demanded Rs.9000/- as costs of repairing that was paid. On 09.04.2018 refrigerator was received back by the claimant and took it to home where it did not operate properly. It was again brought to the defendant but thereafter neither it was repaired nor amount was returned till 11.09.2018. Legal notice was issued to defendant on 19.09.2018 but that was

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District and Sessions Judge  
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not responded. The Claimant now claim an amount of Rs.5,50,000/-as compensation and costs.

2. Defendant contested the claim by submitting his written statement wherein maintained that Aziz Ahmad has nothing to do with any Fridge & AC Centre. Further maintained that in fact one Imran Ahmad son of claimant and Adnan Aziz son of Aziz Ahmad did joint business of Fridge & AC in the name and style of "Adnan Aziz Fridge, AC and Generator Repairing Centre" and that partnership ended due to some financial dispute. In order to avoid liability of son of the claimant, instant complaint has been filed on the basis of untrue facts by making the father of the partner as defendant. Alongwith written statement promotional/visiting card of partnership has also been annexed. The defendant maintain that in fact he is merely "samosa seller" and has no nexus with the shop of Fridge & AC.

3. The complaint was filed on 19.10.2018. On 23.10.2018 no one turned up on behalf of claimant. On 25.10.2018 adjournment for preliminary arguments was sought by learned counsel for claimant. In the meanwhile notice to defendant was issued who as mentioned supra submitted written statement. The matter was then adjourned for today for amicable settlement of dispute in between the parties.

4. Imran Ahmad son of claimant who is also in attendance upon Court's query conceded that Publicity/Visiting card annexed with the written statement is his card and bears his name and mobile phone number. Further maintain that in fact deal for partnership was done with son of Aziz Ahmad but it did not carry further.

5. Confronted with above mentioned scenario adversaries were accorded time to settle their dispute but learned counsel for the claimant under instructions of his client maintained that it cannot be settled and court may proceed itself.

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6. In the above mentioned scenario arguments at pre-trial stage heard.

7. Coming first to the claim put forwarded by the claimant and leaving aside the material brought on record or stance taken by the defendant, as per stance refrigerator was handed over to the defendant on 06.04.2018 and taken back on 09.04.2018 that was found faulty and again brought back to the shop. That was never repaired again. The contents of complaint reflect that defect after repair work allegedly done by the defendant came to knowledge of claimant on 09.04.2018. For the purpose of the Act ibid 09.04.2018 is the date of occurring of cause of action for all purposes. Notice as per stance of claimant was sent on 19.09.2018 i.e. after five months and ten days with the stance that defendant refused to do repair work on 11.09.2018. As mentioned supra instant complaint has been filed on 19.10.2018 i.e., after six months and ten days of occurring of cause of action.

8. Section 28 of the Act ibid governs the situation that for ready reference is being reproduced hereunder:-

**"28. Settlement of Claims.** (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is

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satisfied that there was sufficient cause for not filing the complaint within the specified period:

*Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services."*

9. Again without commenting upon the defence taken in the written statement, even if some credence is given to the stance of claimant then too for the purpose of limitation under the Act ibid the cause of action occurred on 09.04.2018 within the meaning of section 28(4) above. The claim as such could at the most be brought before this forum till May 2018. As such, the claim is barred as the same has not been brought within period specified in section 28(4) of the Act ibid as reproduced above.

10. Now coming to objection regarding concealment of facts that in peculiar circumstances cannot be left unattended. The Act ibid has been promulgated for protection and promotion of the rights and interests of consumers and its purpose is to provide speedy redress of consumer complaints and for matters connected therewith. The purpose of the Act cannot be permitted to be defeated by allowing or ignoring concealment of material facts from the court to the detriment of defendant causing undue inconvenience and agony for him. The material brought on record reflects that in fact son of claimant entered into some business concern with the son of defendant Aziz Ahmad. Even the promotional/visiting card of the shop that has been made defendant in this case bears the name and telephone number of son of claimant. This fact as mentioned supra has been conceded by the son of the claimant in attendance though to the extent of name, phone number and partnership with the stance that said partnership did not continue. This material fact has been concealed by the claimant in the instant complaint. This aspect in itself reflects malevolence on the part of claimant in filing the complaint and that too after period of limitation.

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D&S/J Presiding Officer  
District Consumer Court  
M.B. Din

5/1/19

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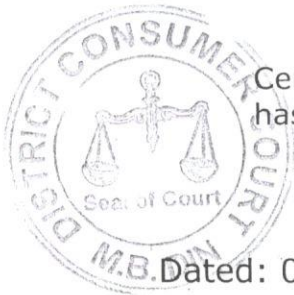
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11. Section 35 of the Act ibid provides that where a claim is found to be frivolous or vexatious, Consumer Court shall dismiss the claim and impose fine on the claimant up to an amount not exceeding ten thousand rupees for having willfully instating a false claim and shall award appropriate compensation to the defendant from the amount of fine so realized. This being fit case for invoking of section 35 of the Act ibid, for all the above mentioned reasons the claim is dismissed by imposing fine of Rs.5000/- upon the claimant 50% of which shall be paid to the defendant as compensation. In case of failure to make payment of the fine the claimant shall have to face the consequences mentioned in section 32(2) of the Act ibid. Copy of the order be provided to the parties 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  
05.01.2019.

(**Muhammad Sarfraz Akhtar**)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din



Certified that this Order consists of five (05) pages and each page has been dictated, read, corrected and signed by me.

Dated: 05.01.2019

(**Muhammad Sarfraz Akhtar**)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din

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*Muhammad Sarfraz Akhtar*  
05/01/2019  
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