

**IN THE COURT OF BAKHT FAKHAR BAHZAD,  
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT  
GUJRAT**

Execution Petition No. 30-17

Syed Suleman Bokhari S/O Syed Yaseen Shah Bokhari, R/O New Murghzar Colony,  
Bhimber Road, Bujrat City.

(claimant)

Vs

Imran Alias Poma, Proprietor Imran Furniture House R/O Mohla Rangpura, Gujrat

(Defendant)

&

Execution Petition No. 31

Syed Suleman Bokhari S/O Syed Yaseen Shah Bokhari, R/O New Murghzar Colony, Bhimber  
Road, Bujrat City.

(Claimant)

Vs

1. Incharge Tiens Company, Office Opposite Aleena Centre Bhimber Road, Gujrat.
  2. Incharge Hasher Care Centre, Opposite Aleena Faza Plaza, Bhimber Road, Gujrat,
- Mob 0333-8414141

(Defendants)

Date of institution: 02-05-2017

Date of decision: 03-05-2017

Present: Ch Aamir Javid Gural on behalf of petitioner.

**COMPLAINT/CLAIM UNDER SECTION 25 R/W Ses30 OF PUNJAB CONSUMER PROTECTION  
ACT, 2005**

BAKHT FAKHAR BAHZAD  
District & Sessions Judge/  
District Consumer Court Gujrat

**Judgment:**

1. As in both the above captioned petitions (applications for execution of the decree) the common question of law is involved therefore, both these application are being decided by a single common order. In this order Syed Suleman Shah Bokhari is a common petitioner which shall be called as Petitioner and Imran Furniture House and Incharge Tiens Company shall be called as Respondents. As both petitions have been filed under Order 21 Rule 10 CPC of the execution of decree therefore during the preliminary arguments advanced by learned petitioner he was confronted to explain that whether order passed under section 30(1) of Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity) comes within the

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ambit of decree as provided in the definition of decree mentioned in Civil Procedure Code (CPC) 1908 as under:-



"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [3] section 144, but shall not include

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

He was further confronted to explain that both the petitions in present form for the execution of decree are maintainable before this court.

2. Before appreciation and dilating on further legal aspects it would be apt to place on record what was the order passed in favour of petitioner and against the respondents in the claim filed under section 25 of the Act.

3. in the claim titled Syed Suleman Shah Bokhari Vs Imran Furniture House following relief was granted by this court which is reproduced as under:-

1. To replace Table with new product of similar description and price which shall be free from any defect.
2. To pay lawyers fee of Rs.10,000/- which incurred on the legal proceedings instead of Rs.15000/- as demanded.
3. To pay Rs.10,000/- as compensation to claimant due to defective product

4. whereas in the second claim titled Syed Suleman Shah Bokhari Vs Incharge Tiens company, this court issued the following order:

"Keeping in view the circumstances and gravity of the matter, the respondents are directed to pay Rs.50, 000/- to the complainant as actual loss amount and litigation expenses."

5. when both the respondents failed to comply with the order passed under section 31 of this court being annoyed, and wretched by the conduct of the respondents the petitioner was constrained to file the petitions for the execution of decree under Order 21 and Rule 10 of CPC.

AKHTI FAKHAR BAHZAD  
District & Sessions Judge  
Presiding Officer  
District Consumer Court Gujarat.

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I have heard the counsel for the petitioner at length and has given my anxious



consideration on this legal aspect that whether order passed by this court under section 31 of the Act is a decree or not?



7. Needless to add here that the petitioner faced the harrowing period of litigation and the travail of trial and ultimately succeeded in getting the above said relief but failed to get the fruits of relief above mentioned. In this regard, I have to say that all my sympathies are with the bereaved petitioner but at the same time this court is prisoner of law and can not bypass settled norms of law and have to reach a irresistible conclusion which is based on law lay down by the superior courts on the subject. As whole edifice of both the petitions above mentioned has been architected on the Order 21 Rule 10 So, I have ample opportunity to grapple with this question that whether Order 21 Rule 10 of CPC is applicable on final order passed by this court. In order to reach on just conclusion of this legal preposition in hand, I have made an attempt in terms of felicitous metaphor to separate provisions of CPC and the Act. In this case I has found feasible to separate the applicability of provision of the code on the final order passed under this Act. Needless to add here that due to lack of awareness on the subject and consumer law prevailing in this country, the common litigants and even prominent lawyers has inextricably mixed up both Act and code in such a way which has deprived litigants from fruits of final orders passed by this court. The lawyers have mixed up the provisions of both Code and Act in such a manner that an absolutely new law has been reconstructed by divorcing essential and relevant provisions provided in the Act. The background against which the application for execution of decree has been submitted, the only available course to me is to discard the arguments advanced by counsel for the petitioner in toto.

  
AKHT FAKHUR BAHZAD  
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Presiding Officer  
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Before embarking upon long journey of examination of the provisions of Act I venture to place on record the salient features of this Act.

9. the avowed object of the Act was to afford speedy and affordable justice to the consumers, shorn of all the technicalities and intricacies of law so that the common man /consumer would also be able to argue his complaint in person without the need of engaging counsel and it has been repeatedly held by the apex courts of this country that unfortunately over the years the Act is losing sight of the intent and his purpose due to becoming hyper-technical. The reason mentioned in the support of arguments are that the judges and advocates while dealing consumer complaints/claims always try to bring in technicalities which they have practised all their lives in the Civil Courts, and thereby frustrate the consumer movement.

  
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0. Before proceeding further I am constrained to place on record the preamble of this Act for better appreciation I am going to reproduce the same as under:-

**Preamble.**— Whereas, it is expedient to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith;

11. After going through the preamble of this Act one thing is very clear that the sole object of this Act was to provide speedy justice to the consumers and under this Act, it is not mandatory to follow the provisions of the Qanoon e Shahdat order 1984 or the CPC and must merely observe the principles of natural justice, devoid of all the technicalities. Hence the dispute should be tried in the summary manner and we should not deliberately confuse the complaints following under this Act with the routine judicial technicalities. A simple procedure has been provided for filing the claims in this court and the legislatures has purposely made a clear and simple that how to redress the complaints of consumers in a very summary fashion and this is enacted in part viii of this Act which relates to the disposal of claims and establishment of consumer court. This part of the Act has eleven sections which deals with different topics including the filing of complaint, establishment of consumer courts, settlement of claims, pre-trial stage settlement and all the solutions are found in section starting from section 25 to 31 of this Act.

12. A comprehensive full dress procedure is provided in section 30 (3) of this Act which is also reproduced under for just decision of these petitions.

**Procedure on receipt of complaint :** Section 30 (3) For the purposes of this section, the Consumer Court shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (Act XX of 1908), while trying a suit, in respect of the following matters, namely:-

- (a) the summoning and enforcing attendance of any defendant or witness and examining him on oath;
- (b) the discovery and production of any document or other material object which may be produced as evidence;
- (c) the receiving of evidence on affidavits;
- (d) issuing of any commission for the examination of any witness; and
- (e) any other matter which may be prescribed.

13. After giving the meticulous appreciation of section 30 (3) of this Act, the most pivotal question is answered that to what extent CPC is applicable on the complaints filed under this

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Act and this section provides further guidance that how on the conclusion of proceedings the court issue its final order. Thus it is required to re-structure the scheme of things narrated supra and other material things in order to bring out as to what picture emerges. So, I must register here the provisions of section 31 of the Act which are reproduce as under:-

**Order of Consumer Court.**— If, after the proceedings conducted under this Act, the Consumer Court is satisfied that the products complained against suffer from any of the defects specified in the claim or that any or all of the allegations contained in the claim about the services provided are true, it shall issue an order to the defendant directing him to take one or more of the following actions, namely:-

- (a) to remove defect from the products in question;
- (b) to replace the products with new products of similar description which shall be free from any defect;
- (c) to return to the claimant the price or, as the case may be, the charges paid by the claimant;
- (d) to do such other things as may be necessary for adequate and proper compliance with the requirements of this Act;
- (e) to pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant;
- (f) to award damages where appropriate;
- (g) to award actual costs including lawyers' fees incurred on the legal proceedings;
- (h) to recall the product from trade or commerce;
- (i) to confiscate or destroy the defective product;
- (j) to remedy the defect in such period as may be deemed fit; or
- (k) to cease to provide the defective or faulty service until it achieves the required standard.

  
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District & Sessions Judge/  
Presiding Officer  
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14. This section of the Act reveals that the legislatures has tried to establish that on the conclusion of the proceedings how the court shall issue its final order and in this section word "shall" has been purposely introduced.

15. After architectureing the whole edifice in the shape of final order passed by this court under this Act of section 31 the legislatures has inserted section 32 and this section has been purposely inserted in this Act to provide punishment and penalty to those persons who do not comply with the order passed by this court and it needs no discerning eyes to comment on the section. It is most important section while deciding the prepositions in hand. I take a little

  
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pause here and now is time to get down to brass tacks so in order to conclude this aspect I have again attempted to place on record the provisions of section 32 of this Act which are reproduced here:-

**Penalties.**— (1) Where a manufacturer fails to perform or in any way infringes the liabilities provided in sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation as may be determined by the court.

(2) \* Where a defendant or the claimant fails or omits to comply with any order made by the Consumer Court, such defendant or the claimant shall be punishable with imprisonment for a term not less than one month which may extend to three years, or with fine not less than five thousand rupees which may extend to twenty thousand rupees or with both.

16. All these provisions of this Act suggests that while filing petition above captioned for execution of decree, the petitioner has been misguided while invoking the provisions of Order 21 Rule 10 of CPC for the execution of the final order passed under section 31 of this Act.

From the flow of above said discussion I have divided my conclusion under the following heads:-

1. The Act does not provides that while concluding the proceedings, the court shall pass a decree and shall prepare decree sheet
2. On the conclusion of claims filed under section 25 of the Act, the court shall pass final order under Section 31 of this Act.
3. Execution /enforcement of the order passed under section 31 of this Act shall be made while invoking the provisions of section 32 of CPC.
4. For the execution of order passed under section 31 of this Act, it is open for the petitioner to choose the mode of execution that either wish that the respondent be tried under section 32 of CPC and procedure while convicting and sentencing the person who has disobeyed the orders passed by this court shall be tried summarily and procedure shall be adopted as provided in the chapter of summary trial in Criminal Procedure Code.
5. Very authoritative powers in the shape of section 36 has been given to this court for the execution/ enforcement / implementation on the order passed by this court.

17. And before embarking upon the other methods of execution I venture to place on record the provisions of section 36 of this Act which are as under:-

*[Signature]*  
**BAKHT FAKHAR BAKHZAD**  
District & Sessions Judge/  
Presiding Officer  
District Consumer Court Gujarat.

*[Signature]*  
**Registrar**  
District Consumer Court, Gujarat.



**Aid to the Consumer Court.**— All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.



18. Survey of section 36 of this Act empowers this court to issue directions to the Deputy Commissioner/ District Collector of this district to execute/enforce/ implement of the final order passed by this court under section 31 of the Act and to recover the amount mentioned in order under section 31 of the Act as an arrears of land revenues. Therefore, after going through the provision of This Act the following scene has been restructured for the execution of the order passed by this court:-

- i. The contemner should be punished under section 32 of the Act by adopting the procedure of summary trial.
- ii. The order be executed through Deputy Commissioner/ District Collector of this district as an arrears of land revenue.
- iii. Both these two remedies above mentioned requires a distinct and separate procedure to be followed by this court can not be clubbed together however, it will be open for the complainant or person who is entitled to execute the order of this court passed under section 31 of the Act to follow both the remedies simultaneously by filing a separate application.
- iv. A composite application for availing both remedies simultaneously shall not be tenable
- v. If the parties/petitioner files a composite application, then the court shall give choice to select his remedy and/ or shall give a discretion to the petitioner to file separate application.
- vi. It will not be open for the opponent/respondent to contend that the person entitled to execute order shall follow the proceedings as required in Order 21 Rule 10 of CPC.

  
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19. The Deputy Commissioner /District Collector on receiving the direction issued by this court under section 36 of the Act is bound to execute order by following the procedure and manner in which arrears of land revenue are to be recovered.

20. After issuing the direction to the Deputy Commissioner/District Collector for the execution of the order passed under Order 31 of the Act, the court shall not become functus officio and shall not lose its control rather it is obligatory and legal duty of the court to have supervisory control over the Collector. As this order flows from the judicial proceedings as stated in section 31 read with section 36 of the Act, therefore, whenever the Deputy Commissioner/District Collector shall refuse to enforce said order or unduly delay execution

  
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and enforcement of order so as to make order futile and non-est in law, this court has a supervisory power over the Deputy Commissioner of district.



21. No doubt while execution or enforcement is going on in a manner provided in land revenue Act/Rule this court will not interfere in the said enforcement proceedings but where court is informed that Deputy Commissioner/ District Collector has wrongly closed the execution of enforcement or has avoided or delayed the execution of enforcement of order passed under section 31 of this Act, it shall amount to a disobedience of directions passed by this court on the part of Deputy Commissioner/District Collector.

22. In the wake of above discussion and after seeking guidance from the land mark judgment titled Muhammad Adnan Vs D & SSJ and others reported in 2015 CLC 1021. I venture to conclude that the final order passed by this court under section 31 of the Act do not come within the ambit of decree as defined in Civil Procedure Code (CPC) and no provision exist in the Act which empowers this court to pass a decree and prepare a decree sheet hence, both the petitions filed under Order 21 Rule 10 of CPC 1908 for the execution of decree are not maintainable in its present form. The crux of the above discussion is that the application filed under Order 21 Rule 10 of CPC is not maintainable before this court in present form which is hereby disposed off being not maintainable.

23. On drawing this conclusion, I have also sought guidance from the unreported judgment passed by State Consumer Disputes Redressal Commission Uttar Pradesh Lucknow in Revision No. 41 of 2013 dated 10-07-2013 in case Titled Ghaziabad development authority through its secretary Vs Sripal Dixit decided on 16-07-2013 by honourable division bench.

24. The guideline has also been sought from the esteemed judgment passed by The Hon'able State Consumer Redressal Commission, MAHARASHTRA, MUMBAI in Appeal No.A/09/1190 titled Mr. Amir Ali Tharani Vs Mr Rajes SUKHTNKAR decided on 27-09-2010.

25. And by the Hon'able State Dispute Redressal Commission, MAHARASHTRA, Mumbai in Execution Application No. EA 13/10(arising out of order dated 3-2-12 in CC/05/20/ by Hon'able Mr.Justice.A.P.Bhangak.

26. The above guidelines are provided for the petitioner to be presented the execution petition in its proper form/format. A copy of this be sent to the Deputy Commissioner/District Collector of district and the president of District Bar Association Gujarat through registrar of this court for their information and guidance for to be circulated to the learned members of

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District Bar Association Gujarat for future guidance and for strict compliance. Copy of this judgment be also placed in the file of other petition titled Syed Suleman Bokhari Vs Incharge Tiens Company etc.

Announced: 03-05-2017

**BAKHT FAKHAR BAHZAD**  
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Certificate:-

It is certified that this judgment consists of nine pages. Each page has been dictated, read, corrected and signed by me.

Announced: 03-05-2017

Judge consumer court  
GUJRAT.

**Registrar**  
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