

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

Case No. 47 of 2018
Date of institution 20.12.2018
Date of decision 29.01.2019

✓ Tamoor Faraz son of Ghulam Rasool, Caste Gondal, resident of Dhola, Tehsil Phalia District Mandi Baha-ud-Din.

Vs.

1. Maher Muhammad Ashraf;
2. Maher Muhammad Akram; and
3. Ch. Atif Ali Raza

Arain Brothers, Hamid Ahmad Angro Zari Workshop, Near Quaid-e-Azam High School, Phalia District Mandi Baha-ud-Din.

Present: Claimant with Mr. Arshad Saleem Advocate.
All the three Defendants in person.
Preliminary arguments heard.

ORDER:

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by Taimoor Faraz claimant against Maher Muhammad Ashraf, Maher Muhammad Akram and Ch. Atif Ali Raza defendants. The claimant maintain that an agreement was entered into between the adversaries on 28.10.2018 according to which the services of the defendants were hired for ripping off paddy crop upon six acres and earnest amount of Rs.10000/- was paid to them. The work was to start in 5/6 days but subsequently the defendants refused to do the work resulting into metal agony and loss of crop. Legal notice was issued on 23.11.2018 but the needful was not done whereupon instant complaint has been filed with total claim of Rs.14,90,000/-.

2. Preliminary arguments to some extent were heard on first date of hearing i.e., on 20.12.2018 when the matter was

ATTESTED
REGISTRAR
District Consumer Court M.A. DIN

29.1.19

adjoined for further arguments with respect to jurisdiction of this forum and in the meanwhile notices were issued to the defendants.

3. Today, all the three defendants appeared in person. Defendant No.3 Ch. Atif Ali Raza is a minor of aged about 6/7 years. Upon question he replied that he is a student of 2nd Class in Government Girls Elementary School Phalia. In this situation learned counsel for claimant was asked as to how a minor of 6/7 years of age has been made party in this case? Learned counsel replied that claimant was not in knowledge that he is minor.

4. In para 2 of the complaint it is specifically alleged that an amount of Rs.10,000/- was paid to the defendants as earnest money. It is further mentioned that the claimant time and again asked the defendants to start work but ultimately they refused. Contents of para-2 of the complaint leaves no room for taking the stance that the claimant was not in knowledge that defendant No.3 is a minor. This aspect alone is sufficient to hold that complaint has been filed on the basis of untrue facts.

5. Notwithstanding the above mentioned factor, as mentioned supra question of jurisdiction is also yet to be settled. Matters covered under the Act ibid are enumerated in Part-II to Part-V i.e., from sections 4 to 22. Careful perusal of these provisions indicates that a party can approach Consumer Court on the cause of action of defective product, defective services, obligation of manufacturer and unfair practices. Evidently, case of claimant is with regard failure to perform work to ripe off paddy crop despite receipt of advance amount of Rs.10,000/-. Entire claim when examined, even by way of imagination, it is not a case of defective service rather it is a case where work under agreement has not been performed. At the most this the case of non performance of personal service under an agreement that does not fall within the definition of "services" in view of section 2 (K) (i) of the Act ibid according to which rendering of any services

Muhammad Sarfraz Akhtar
District & Session Judge
Presiding Officer
District Consumer Court
M.B. Din

29.01.2019

ATTESTED
REGISTRAR
District Consumer Court M.B. Din

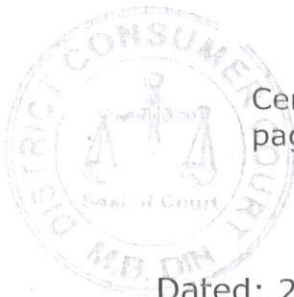
under a contract of personal service is not included within with the definition of services provider. As such, the matter does not fall within jurisdiction of this court and resort to this forum is unwarranted.

6. In nutshell, for both the above mentioned reasons the claim cannot be entertained. The same stands dismissed. Needless to mention that in case remedy under any other law is provided, the claimant may avail the same and in such an eventuality that shall be adjudged on its own merits without being influenced from this order. 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
29.01.2019.


(**Muhammad Sarfraz Akhtar**)

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



Certified that this Order consists of three (03) pages and each page has been dictated, read, corrected and signed by me.

Dated: 29.01.2019


(**Muhammad Sarfraz Akhtar**)

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

ATTESTED

REGISTRAR
District Consumer Court M.B. DIN
29.01.2019