

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

Case No. 30 of 2018
Date of institution 01.10.2018
Date of decision 28.02.2019

Zaheer Ahmad Ranjha son of Ghulam Rasool, resident of Madhray, Tehsil Phalia, District Mandi Baha-ud-Din.

Vs.

Proprietor Muhammad Ibrahim Tabish Traders, Grain Market, Tehsil & District Mandi Baha-ud-Din.

Present: *Mr. Iftikhar Ahmad Ranjha Advocate counsel for Claimant.*

Mr. Khizar Hayat Gondal Advocate counsel for Defendant.

Arguments heard. Record perused.

ORDER:

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by Zaheer Ahmad Ranjha claimant against Proprietor Muhammad Ibrahim Tabish Traders defendant. The claimant maintain that he purchased five sacks of Super Basmiti seed on 19.05.2018 from the defendant for consideration of Rs.9,750/- vide receipt Ex.PD. The claimant after initial process of seedling cultivated the same in 20 Acers. While observing height and growth of the crop it transpired that the seed sold to the claimant was defective. The matter was immediately reported to the defendant who inspected the crop and conceded his fault with assurance that loss of claimant shall be compensated but subsequently refused. Legal notice was issued to defendant on

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11.09.2018. As the grievance of the claimant has not been redressed, complaint has been filed. The claimant now maintain that due to the conduct of the defendant he has suffered loss of Rs.20,00,000/- . Accordingly compensation has been claimed.

2. The defendant in the written statement maintained that in fact 5 sacks of seed of Super Basmiti for 15 Acres was sold to the claimant. One sack of Kainat Basmiti and one sack of Basmiti-86 was also purchased by the claimant. At the demand of claimant seed of Nawab Seed duly verified by Punjab Seed Corporation was sold that has not been made party in this complaint. It has been further maintained that there might be some mixing on the part of claimant to cater for 20 Acres instead of 15 Acers.

3. As no settlement was arrived in between the parties, they were directed to adduce respective evidence. The claimant submitted his affidavit Ex.PA and subsequently appeared as PW.1. He also produced Riaz Ahmad (PW.2 with Affidavit Ex.PB) and Umer Raza (PW.3 with Affidavit Ex.PXC). In documentary evidence receipt Ex.PD, copy of notice Ex.PE with postal receipt Ex.PE/1 and photographs Mark-A to Mark-D were also produced.

4. Defendant on the other hand produced Muhammad Ibrahim (DW.1 with Affidavit Ex.DA), Arshad Ali (DW.2 with Affidavit Ex.DB), Akbar Ali (DW.3 with Affidavit Ex.DC) and Muhammad Rafique (DW.4 with Affidavit Ex.DD).

5 PW.1 in his affidavit Ex.PA supported the stance mentioned in the complaint. In cross examination upon questions put by learned counsel for defendant replied that at the time of purchase the sacks were sealed but he does not know if the seal was of a company; in the year 2017 he earned Rs.95,000/- per Acer; there was no joint seedling rather the same was done separately; at the inception growth was good but due to defective seed further growth was adversely effected; denied that any mixing was done by himself. Same were the stances of remaining

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witnesses except with respect to presence of Muhammad Ibrahim at the time of purchase of seeds.

6. Muhammad Ibrahim DW.1 in his affidavit supported the stance as mentioned in the written statement. In his cross examination he maintained that there are three partners in "Tabish Traders" including himself, Mian Arsalan and Mian Nadeem; replied that Ex.PD bears the signature, mobile phone number of Mian Arsalan and stamp of shop; conceded that upon complaint regarding seeds he alongwith others visited the claimant; 10 Acres of crop was checked and there was problem with only one Acre; he maintained that he agreed to compensate to the tune of 5000/10000/-. Denied that in fact it was settled that either he shall pay Rs.2,00,000/- in lump sum or the difference of average produce that was agreed but subsequently he resiled.

7. Arshad Ali DW.2 in his cross examination maintained that he alongwith defendant and others went to the claimant but the matter was not resolved. Akbar Ali DW.3 in his cross examination replied that only one Acre or something more than one Acre crop was effected rest was fine. Muhammad Rafique DW.4 was with respect to conduct of defendant in general and his testimony is not related to the matter in hand.

8. Before proceeding further, during final arguments learned counsel for the defendant today raised objection that the claim is time barred as seed was purchased on 19.5.2018 and complaint has been filed on 1.10.2018. In this regard learned counsel has relied upon 2014 CLC 154. I am afraid that the case law cited at the Bar is not applicable to the matter in hand as in the instant case the moment defect was observed the matter was brought to the notice of defendant who visited the site and subsequently complaint was filed after issuance of notice within permissible time limit at the time when even the crop was standing and not ripped off.

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9. Another objection with respect to non-joinder of Nawab Seed has been raised. The seed was sold by the defendant to the claimant. The receipt issued by the defendant does not contain the name of Nawab Seeds. There is nothing on the record that defendant is acting as agent or distributor of Nawab Seeds. It is the defendant who claims that the seed Nawab Seeds duly verified by Punjab Seed Corporation was sold by him. But this fact has not been substantiated by him in the evidence as no Serial No. of sacks of proof of verification by Punjab Seed Corporation has been produced. As such, this objection in absence of above said aspect is of no help.

10. Now coming to merit of case, admittedly seed was sold by the defendant to the claimant. From the suggestion put to DW.1 regarding settlement and payment of lump sum amount of Rs.2,00,000/- coupled with the replies of DW.1 and DW.3 regarding effected crop of One Acre or something more than one Acre reflect that entire crop was not effected as claimed by the claimant. Reply of claimant with respect to earning of Rs.95,000/- per Acre in the year 2017 by the claimant when read with the suggestion put to DW.1 and replies of DW.1 & DW.3 reflect that the stance of defendant with respect to quantum of effected crop is more plausible.

11. In the above mentioned scenario when the claimant in his evidence has substantiated the stance and assertion of DW.1 & DW.3 in cross examination mentioned supra, the liability of the defendant in respect of defective product cannot be avoided. It was the duty of defendant to provide defect free product for the price he received from the claimant. As such, 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. 20,00,000/- (twenty lacs) has been demanded as compensation and damages. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping

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in view facts and circumstances of transaction in question and product which was sold. Further conduct of the defendants is also to be seen. On the basis of material brought on record only one Acre of the crop appears to have been effected as conceded by the above said witnesses of defendant. The earning of previous year as claimed by the claimant in reply to a question in the witness box was Rs.95,000/- per Acre. Resultantly, the appropriate compensation on the basis of material available on the record is assessed at Rs.1,00,000/- (one lac). To this extent the claim of claimant is allowed. The defendant "Tabish Traders" (an unregistered concern having partners namely Muhammad Ibrahim, Mian Arsalan and Mian Nadeem) is held responsible to make good the loss assessed.

12. Therefore, in terms of section 31 of the Act, I issue an order and direct the defendant (i.e., all the three partners of Tabish Traders namely; Muhammad Ibrahim, Mian Arsalan and Mian Nadeem) to satisfy claim of the complainant as assessed above within fifteen days starting from today. In case of failure to comply with the order, said partners 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
28.02.2019.

(Muhammad Sarfraz Akhtar)

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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: 28.02.2019

(Muhammad Sarfraz Akhtar)

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

Handwritten notes in Urdu: "کام مکمل ہو گیا", "28-2-19", "محمد سرفراز اکhtar", "28/02/19", "لیٹریچر/ڈپٹی سیکریٹری".