



بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

**IN THE COURT OF TAHIR PERVEZ DISTRICT
& SESSIONS JUDGE, DISTRICT CONSUMER
COURT, SAHIWAL.**

Case No. 816/DCC/SWL

Dated. 03-10-2011

ZIA MUHAMMAD S/O BASHIR AHMAD CASTE ARAIN R/O
CHAK NO. 3/D DEPALPUR

-----CLAIMANT

Versus

SYED ABID HUSSAIN S/O SYED HASSAN SHAH CASTE SYED,
HUSNAIN COLD STORAGE, 10 KM ADDA SAL-E WAL TEHSILE
DEPALPUR.

-----DEFENDANT

**CLAIM FOR RECOVERY OF COMPENSATION RS. 9,50,000/-
AND DAMAGES RS. 6,84,000/- COST OF RASHION(POTATOES)
RS. 7,57,500/- TOTAL RS. 23,91,500/-**

Order.

1. Briefly stated facts of the case are that the claimant Zia Muhammad filed a claim for recovery of Rs. 23,91,500/- against Syed Abid Hussain the respondent.

2. The claimant is a cultivator by profession and respondent is the proprietor of a cold storage. The claimant stored 531 bags of potatoes for purposes of food and seeds on different date's i.e 13-3-11 and 14-03-11 and 16-03-11 against proper receipts with the respondent. The respondent was required to maintain quality of potatoes and not to commit any negligence in their look after/preservation. Before the fixed date, on 05-09-11, on receipt of an information, the claimant inspected/visited the cold storage of the respondent and found that potatoes stored in the cold storage were rotting. The claimant moved an application to DDO agriculture (Extention) for inspection of the potatoes. This application was forwarded to concerned department i.e Federal Seed Certification

and Registration Department, Sahiwal. The said Department prepared a report which was made the part of the claim. On 13-09-11, claimant issued a notice to the respondent but he did not reply to it. The claimant alleged that due to negligence and poor services of the respondent, his all potatoes were damaged. Thus, he was deprived of all the sale price of the potatoes and he could not sow the coming crop with the potatoes seeds stored with the respondent but damaged. He claimed that he was entitled to the cost of the potatoes, potato seeds and the anticipated crop for which he assessed the loss and damages to the tune of Rs. 2391950/- in total.

3. The respondent resisted the claim in law and facts. According to him, this court had no jurisdiction to try the complaint, the claimant had not approached the court with clean hands, No notice was issued, the cold storage was on lease with his son Noor Hassan Shah and that he was entitled to special costs. While replying to the facts of the case, he took a plea that he was not responsible for any damage to the potatoes stored in the cold stored which was already on lease with his son Noor Hassan Shah. He also alleged that the claimant had not paid cold storage charges. He denied that the claimant was entitled to the amount as prayed for.

4. At initial stage, an effort was made to bring the parties to some settlement but without any positive results. Therefore, the parties were directed to produce their evidence in support of their respective version.

5. The claimant examined himself as Pw-1. He also produced Muhammad Naveed Pw-2 and Muhammad Zubair, Seed Certification Officer as Pw-3. He relied upon receipts Ex-P1 to P5, notice Ex. P6, postal receipt Ex-P7, receipt AD Ex-P8. During statement of Muhammad Zubair Pw-3, report dated 12-09-11 was placed on record as Ex-P9.

6. Syed Noor Hassan Dw-1 appeared in rebuttal. However, he also produced in his evidence notices mark R1 to R5 and postal receipts Ex-D1 to D5.

7. The learned counsel for the respondent argued that the claim was not maintainable as the claimant did not fall under the definition of consumer. However, the learned counsel for the claimant denied it.

8. As defined in Section 2 (c) of the Punjab Consumer Protection Act 2005, consumer means a person or entity who buys or obtains on lease any product for consideration which includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose or hires any services for consideration and includes any beneficiary for services. There is no denial to the fact that to fall under the definition of consumer, a person has to pay consideration to hire the services of any person. Admittedly, the claimant did not pay the rent to the claimant at the time of storage of potatoes. The claimant explained in his cross examination that the rent was to be paid at the time of removing/lifting the potatoes from the cold storage of the respondent on expiry of contractual period. It was other wise settled principle in the business of potatoes and storage thereof that cold storage rent is always paid when the things stored are removed shifted on expiry of settled period. Its reason was that the entire valuable property of consumer would remain in the custody of the service provider. The set tradition or precedent or settled implied agreement between the consumer and service provider of cold storage was undeniable fact which was difficult to be ignored. Therefore, the claimant cannot be excluded from the definition of consumer. Thus, this Court has a jurisdiction to adjudicate upon the matter.

9. The learned counsel for the respondent next contended that cold storage was on lease with Syed Noor Hassan Shah, the son of the respondent namely Syed Abid Hussain and that the said lessee, Noor Hassan was not impleaded as party therefore, the claim was not maintainable.

10. A perusal of receipts Ex-P1 to P5 would show that the proprietor of cold storage was Syed Abid Hussain, the respondent and that Syed Noor Hassan Shah had no connection whatsoever with it. If the cold storage was on lease with Noor Hassan Shah, the respondent ought to have placed on record any lease agreement and if the lease

agreement was oral then reasonable and confidence inspiring oral evidence was required to be produced about the stated factum of lease which was missing in this case. Mere oral assertion that the cold storage was on lease with Syed Noor Hassan Shah carried no legal significance. If the said Noor Hassan was running the affairs of cold storage being son of the proprietor Syed Abid Hussain, it would not mean that he was acting as lessee. However, it may be presumed that being son, he was looking after the affairs of cold storage but merely this fact does not bring him within the definition of lessee. The arguments on this point advanced by the learned counsel for the respondent is therefore repelled.

11. it was another argument of the respondent that in fact, cold storage was being run by Syed Noor Hassan and that no legal notice was issued to him therefore, the claim was not maintainable. This argument too is devoid of any force for the simple reason that proprietor of the cold storage, as per record, was Syed Abid Hussain and the claimant was under a legal obligation to issue a legal notice to its proprietor and not to an acclaimed lessee, the claimant discharged his duty by way of issuance of legal notice Ex-P6 through postal receipt Ex-P7. This notice duly remitted and sent on correct address would be presumed to have reached its destination. This fact was apparent from signatures on acknowledgment due card Ex-P8.

12. Zia Muhammad, the claimant Pw-1, in his examination in chief reiterated facts incorporated in the claim. He stated on oath that the potatoes meant for seeds and food purposes, 531 bags in total, were stored with the respondent vide receipts Ex-P1 to P5. The factum of storage of potatoes was not denied. The claimant alleged that potatoes bags were damaged due to poor and faulty services provided by respondent. On this point, during cross examination, nothing favourable to the case of the respondent could be elicited from him. Muhammad Amin Pw-2 also verified that in September 2011 during his visit of the cold storage of the respondent, on asking of the claimant, he found that the potatoes had been damaged.

13. On the request of the claimant, Muhammad Zubair, Seed Certification Officer Seed Analyst, Sahiwal inspected the cold storage

of the respondent on 9-9-11. After spot inspection he prepared his report Ex-P9. The said Muhammad Zubair Pw-3 also appeared in the court as witness and verified his signatures on the report. After inspection of cold storage of the respondent, he observed as under

“The storage temperature was not properly maintained, high temperature (above 4C) resulted in sprouting and rotting of stored potatoes, making them unfit for seed or food purpose”

14. Muhammad Zubair was also subjected to cross examination. He admitted in his cross examination that he could only check the seeds. However, he explained that seeds stored in some cold storage could also be validly checked/inspected by him. Needless to mention that Pw-3 was an independent witness having no concern whatsoever with either of two parties. There is nothing in his cross examination suggesting that he extended any favour to the claimant or he had any link with him or that he had any ill will against the respondent. Therefore, his report could not be ignored. He clearly and specifically verified that sprouting and rotting of stored potatoes had been caused due to high temperature making them unfit for seed or food purpose. The oral as well as documentary evidence particularly the report Ex-P9 has swayed this Court to believe that the potatoes stored with the respondent were damaged due to poor, substandard and faulty services provided by respondent.

15. Syed Noor Hassan Dw-1 appeared in the witness box to negate the version of the claimant. He claimed himself a lessee of cold store. As recorded/observed supra, it was not proved on record that he was lessee under the proprietor Syed Abid Hussain, his father. Syed Noor Hassan placed on record special power of attorney whereby the respondent authorized him to make statement in the Court. The said Noor Hassan Dw-1 did not make it clear in his statement recorded as Dw -1 that he was appearing in the court as special attorney on behalf of his father Syed Abid Hussain. Therefore, the statement of Noor Hassan Dw-1 may be treated as the statement of an ordinary witness and not as respondent. It can therefore be said that there was no evidence on behalf of the respondent in rebuttal. However, if his

statement recorded as Dw-1 is read in evidence, even then, the allegations made by the claimant were not found incorrect and misconceived. According to the respondent, the rates of potatoes in market had been lowered down and rent of stored potatoes was at higher rate, therefore, the claim was liable to dismissed. This statement was in-sufficient to extend any benefit to the respondent.

16. Syed Noor Hassan Dw-1 placed on record notice to the claimant regarding payment of rent Mark-1 to Mark-5 sent through postal receipts Ex-D1 to ex-D5. Through the said receipts, Syed Noor Hassan, an acclaimed lessee asked the claimant to pay the rent. It was already observed in earlier part of this order that rent of stored potatoes was to be paid at the time of removing /lifting stored items and not at the time of storage. Therefore, the notice Mark-1 to Mark-5 carried no legal significance.

17. It would be useful to add here that some documents were allowed to be placed on record under objection. There was no denial to the fact that law of evidence is not applicable in proceedings conducted by consumer court. It has its own procedure which is summary in nature. Therefore, documents, though photocopies, authenticity whereof, does not appear to be doubtful, can be read in evidence thus, objections on this point are turned down.

18. The findings and observations recorded above have swayed this Court to hold that 531 bags of stored potatoes were damaged due to poor and faulty services of the respondent. Therefore, the claimant was entitled to get compensation for the same. Admittedly 228 bags were stored with respondent for object to use it for seed purposes. 303 bags were stored for food purposes. All these bags were damaged because of poor and substandard services of the respondent. It was observed that regarding potatoes stored with respondent for purposes of seeds for anticipated/ prospective crop for next season. Correct price or expected benefit has not been specifically explained by the claimant. Otherwise also, prospective damages of crop may hardly be counted in terms of money at present moment. Therefore, the price of per bag is treated @ Rs. 2500/- per bag. Consequently the claimant

is held entitled to be compensated for damages to the tune of Rs. $531 \times 2500 = 13,27,500/-$. Claimant is also held entitled to get Rs. 20,000/- as litigation charges. Resultantly, respondent would be bound to pay a sum of Rs. 13,47,500/- to the claimant within 30 days from this order. The claim of Rs. 7,57,500 regarding expected crop in next season is not accepted.

Announced.
07-07-12

Sd/-
District & Sessions Judge/District Judge
Consumer Court Sahiwal

Certified that this order consists of seven pages, which have been dictated and signed by me.

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Sd/-
District & Sessions Judge/District Judge
Consumer Court Sahiwal

