

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Criminal Appeal No. 559/2023

Shaista Jamil

Vs.

Daraz and another

JUDGMENT

Date of hearing	23.06.2023
For the Appellant:	Syed Fakhar Imam Bukhari, Advocate.
For Respondent No.1:	Mr Sikandar Abbas, Advocate, assisted by Mr Jabran Munir Awan, Advocate.
For Respondent No.2:	Nemo.
Research assistance:	Asim Murtaza Cheema, Research Officer, LHCRC.

Tariq Saleem Sheikh, J. – The Appellant claims that on 30.5.2022, a vendor on Daraz, who called himself “Innocent Gamer” with Facebook ID Bandex.net, persuaded her to buy a VIVO V19 cell phone online at a 20% discount. At 11:23 p.m., she remitted PKR 48,000/- for it to *Daraz Wallet Account* using Easypaisa (Transaction ID: 7648354737). The order was confirmed, and after 20 minutes, she received an e-mail informing her that the cell phone had been delivered to her address, which was untrue. She didn’t get any. She realized it was a scam and immediately notified the Daraz Customer Care Department about it via e-mail. She also requested a return of the money she had deposited in the Daraz Wallet Account as aforesaid. The Customer Care Department sought various details from the Appellant over the next ten days, pretending to resolve the matter, but on 11.6.2020, denied the company’s liability and asked her to approach the Federal Investigation Agency under the Prevention of Electronic Crimes Act, 2016 (PECA) for redress. The Appellant served Daraz with a statutory notice under the Punjab Consumer Protection

Act, 2005 (the “Punjab Act”), demanding Rs. 2.00 million in compensation and Rs.27,000/- in legal fees for faulty service. On 4.7.2020, she filed a claim under section 25 of the Act with the District Consumer Court, Multan, which the Presiding Officer rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) by order dated 7.4.2022 (the “Impugned Order”). Hence, this appeal.

2. The office objected that a criminal appeal against the Impugned Order is not competent. This Court ordered that it would consider that objection on the judicial side and, subject to the question of maintainability, issued notice to the Respondents. Respondent No.2 (Innocent Gamer) could not be served due to non-availability of address.

3. The Appellant’s counsel, Syed Fakhar Imam Bukhari, Advocate, insists that this criminal appeal is maintainable under section 33 of the Punjab Act and that the office objection is misconceived. On merits, he contends that Daraz, through its website and media campaign, offers simple and secure online shopping, safe and fast payments, money and order tracking, and hassle-free returns and refunds. However, it did not happen in the present case. The Appellant has suffered a loss due to Daraz’s poor service and unfriendly customer policies. Mr Bukhari further contends that the Appellant’s complaint before the Consumer Court was competent, and the judge has misapplied the provisions of Order VII Rule 11 CPC to reject it.

4. The counsel for Daraz, Mr Sikandar Abbas, Advocate, has supported the office objection and defended the Impugned Order. He submits that the Appellant’s complaint does not disclose a cause of action against Daraz, and the Consumer Court rightly rejected it. She was duped by a phoney Facebook Page, Bandex.net, for ordering a cell phone. Her money went into a bogus account created by the swindler. Although that account was styled as *Daraz Wallet Account*, Daraz did not own it and never received any money from the Appellant. Daraz has not committed any negligence and is, therefore, not liable to compensate her for the loss. The Appellant is a victim of cybercrime and should seek redress under PECA.

Opinion

5. The United Nations General Assembly, by Resolution 39/248 of 16 April 1985, adopted the U.N. Guidelines for Consumer Protection which stated:

“Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level, and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsible for the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.”

6. The Economic and Social Council expanded the 1985 Guidelines in Resolution 1999/7 on 26 July 1999, which the General Assembly revised and adopted in Resolution 70/186 of 22 December 2015. These Guidelines are valuable principles outlining the key features of effective consumer protection legislation, enforcement institutions and redress mechanisms. They help interested Member States develop and enforce domestic and regional laws, rules and regulations suitable to their economic, social and environmental conditions. They also foster international enforcement cooperation among Member States and stimulate the exchange of experiences in consumer protection.¹

¹ Preface of the United Nations Guidelines for Consumer Protection.
https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

7. The Punjab Act is a special law inspired by the above-mentioned U.N. Guidelines.² Section 3 thereof stipulates that its provisions are in addition to and not in derogation of any other law for the time being in force. Part II of the Act addresses liability for defective products, while Part III discusses liability for defective and faulty services. Part IV details the obligations of manufacturers. Part V prohibits unfair practices. Part VI to VIII set out the procedure for punishing offences under the Act and disposal of claims. Part IX contains some miscellaneous provisions.

8. The Punjab Act creates two forums for dealing with matters it covers. Section 23(1) states that any person may file a complaint for violation of sections 11, 16, 18 and 19 before the Authority which may fine the offender up to Rs.50,000/- if the allegation is proven. Section 2(b) defines “Authority” as the District Coordination Officer of the relevant district or such other officer as the Government may notify. Section 23(2) stipulates that the Authority may file a claim before the Consumer Court for declaring a product defective under sections 4, 5, 6, 7 or 8 or a service as faulty or defective under section 13. Section 23(3) states that the Authority may approach the Consumer Court for declaring an action of any person as being in contravention of Part IV of the Act. Section 23(4) says that the Authority may, on receipt of a complaint or reference from the Consumer Protection Council or on its own motion, hold an inquiry as to the defects in products, services or practices which contravene any of the provisions of the Act. Section 23(7) provides that any person aggrieved by the Authority’s order under section 23(1) may appeal to the Government within 30 days.

9. The second forum is the Consumer Court established under section 26 of the Punjab Act, which adjudicates claims for damages arising out of contravention of any provisions of the Act (see section 25) following the procedure outlined in section 30. If it

² The preamble of the Punjab Consumer Protection Act, 2005 reads:

“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.”

determines that the products complained about have any of the defects mentioned in the claim, or that any or all of the allegations contained in the claim against the services are true, it shall direct the defendant to take one or more of the actions listed in section 31 of the Act.

10. It is noteworthy that sections 16 and 18 appear in both sections 23(1) and 32(1). The effect of this duplication will be examined in an appropriate case.

11. The first question that requires determination is as to what is the nature of proceedings under the Punjab Act.

12. There are two broad categories of law: criminal law and civil law. In the most general sense, criminal law aims to punish, while the civil law is meant to compensate. As a result, they have different procedural rules, including those relating to evidence. This paradigm shapes legal principles and the division of authority among courts.³

13. Historically, there have been different emphases in defining the purposes of criminal law, which gave rise to the theories of retribution, deterrence, prevention and reformation. However, modern legal theorists posit that criminal and civil law serve the same function of societal control. According to Kenneth Mann,⁴ punitive civil sanctions are rapidly expanding, affecting a growing segment of society in cases brought by private parties and the government. These sanctions are sometimes more severe than the corresponding criminal penalties for the same conduct. Punitive civil sanctions are replacing a significant part of criminal law in crucial areas of law enforcement, particularly in white-collar prosecutions, for two reasons: first, they carry tremendous punitive power, and second, they are more efficient than criminal penalties because the criminal procedure does not constrain them. Consequently, the jurisprudence of sanctions is undergoing a radical change. As more punishment is handed down in civil proceedings, the features distinguishing civil from criminal law become less clear. Almost every attribute associated with one paradigm appears in the

³ Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, The Yale Law Journal, June 1992, Vol. 101, No.8, Symposium: Punishment (Jun., 1992), pp. 1795-1875. <https://www.jstor.org/stable/796948>

⁴ *ibid.*

other. Imprisonment, which is linked with the criminal process, also exists in the civil realm. For example, civil contempt is punishable by incarceration. Payment of money, distinctively associated with civil law, takes the form of fines in criminal law. Mann further states:

“I use the term ‘middleground’ to describe the jurisprudential arena of punitive civil sanctions. The middleground draws on the two basic paradigms that form the doctrinal basis for the entire field of sanctioning law: criminal law and civil law. The paradigms of criminal and civil law stem from longstanding conventions about the essential nature and function of legal sanctions. Within this paradigmatic framework, the criminal law is distinguished by its punitive purposes, its high procedural barriers to conviction, its concern with the blameworthiness of the defendant, and its particularly harsh sanctions. In contrast, the civil law is defined as a compensatory scheme, focusing on damage rather than on blameworthiness, and providing less severe sanctions and lower procedural safeguards than the criminal law. The middleground draws on these two basic paradigms to form a hybrid jurisprudence in which the sanction’s purpose is punishment, but its procedure is drawn primarily from the civil law.”

14. Legislatures today also give administrative bodies the authority to punish offenders in civil proceedings. In the United States, Mann writes, when the Supreme Court upheld the administrative procedure for assessing penalties, it left Congress free to expand the powers of administrative agencies and grant them additional power to impose penalties. In response to the reports that the government failed to prosecute many medicare and medicaid fraud cases, Congress empowered the Secretary of the Department of Health and Human Services to levy a civil money penalty of up to \$ 2000 for each fraudulent claim plus twice the amount claimed. Congress has increased the authority of the Securities and Exchange Commission to seek punitive sentences. It has also expanded civil penalties in the False Claims Act and several other laws.

15. Notwithstanding the above developments, the distinction between civil and criminal penalties is of constitutional importance. The U.S. Supreme Court noted this fact in *United States v. Ward*, 48 U.S. 242 (1980), and pointed out that the Self-incrimination Clause of the Fifth Amendment, for example, is expressly limited to “any criminal case”. Similarly, the Sixth Amendment safeguards are only available in criminal prosecutions. The Double Jeopardy Clause protects only against criminal punishment, and proof beyond a

reasonable doubt is required only in criminal cases. The Supreme Court went on to say that whether a particular statutorily defined penalty is civil or criminal is a matter of statutory interpretation. Traditionally, the inquiry in this regard has proceeded on two levels. First, the court has to determine whether Congress expressed or implied a preference for one label or the other when establishing the penalizing mechanism. Second, whether Congress has indicated an intention to enact a civil penalty. If so, the court must then inquire whether the statutory scheme was so punitive in purpose or effect to negate that intention. The Supreme Court said that the factors listed in Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963), which are neither exhaustive nor dispositive, help determine whether an Act of Congress is penal or regulatory. They are as follows:

“Whether the sanction involves an affirmative disability or restraint, whether it has historically been recorded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment, retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry, and may often point in differing directions. Absent conclusive evidence of Congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face.”

16. The Punjab Act follows the modern legislative trend discussed above. It provides a remedy before the Authority, an administrative body, in some matters and before the Consumer Court in others.

17. The Punjab Act’s provisions are predominantly civil in nature,⁵ but sections 23(1) and 32 require in-depth analysis. Section 23(1) empowers the Authority to impose fines for certain infractions of the Act. Section 32(1) states that when a manufacturer violates sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment up to two years or with a fine up to a hundred thousand rupees or with both, in addition to damages or compensation as may be determined by the Consumer Court. Thus, it creates statutory offences. Section 30(2) states that where a defendant or a claimant fails or omits to comply

⁵ especially sections 27, 28, 30 and 31.

with the Consumer Court's order, he would be punished with imprisonment and a fine. Applying the principles laid down in *Kennedy's* case, in my opinion, sections 23(1) and 32(2) of the Punjab Act establish civil penalties.

18. Section 32(2) of the Punjab Act is analogous to section 27 of India's repealed Consumer Protection Act of 1986 and section 72 of the Consumer Protection Act of 2019 presently in force. In *State of Karnataka v. Vishwabharathi House Building Coop. Society and others* (AIR 2003 SC 1043), while considering section 27 of the 1986 Act,⁶ the Indian Supreme Court held that it is an additional power for the execution of orders. The relevant excerpt is reproduced below:

“58. Furthermore, section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A of the Civil Procedure Code or the provisions of the Contempt of Courts Act or section 51 read with Order 21 Rule 37 of the Civil Procedure Code. Section 25 should be read in conjunction with section 27. A Parliamentary statute indisputably can create a tribunal and might say that non-compliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery.

59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess the power to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have conferred upon the tribunal all powers in order to make its order effective.”

19. The Allahabad High Court ruled in *Ghaziabad Development Authority v. Union of India (UoI) and another*, 2003 (4) AWC 3078 b), that the proceedings under section 27 of India's Consumer Protection Act of 1986 are akin to civil contempt. It stated:

⁶ Section 27 of the Consumer Protection Act of 1986 stated:

27. **Penalties.**— Where a trader or a person against whom a complaint is made (or the complainant) fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person (or complainant) shall be punishable with imprisonment for a term which shall not be less than one month but, which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that ...

“A perusal of section 27 clearly shows that the proceedings therein are in the nature of proceedings for contempt, and their object is to compel obedience of the orders of the District Forum, State Commission or the National Commission ... The proceedings under section 27 are really not ordinary criminal proceedings in respect of offences under [the Indian Penal Code] or some other statute. The ... only procedure required in these proceedings is that the principles of natural justice should be complied with ... It appears that Parliament has specifically enacted section 27 to give teeth to the provisions of the Consumer Protection Act. Had there been no provision for enforcement of the orders of the authorities under the Act, the entire purpose of the Statute would have been frustrated as nobody would obey the orders of these authorities. Without the sanction of section 27, the entire consumer jurisdiction would only be a paper tiger lacking teeth.”

20. In view of the above, it is reasonable to conclude that section 32(2) of the Punjab Act does not *stricto sensu* constitute a statutory offence but serves as a tool for the execution of the Consumer Court’s orders.

Proceedings before the Consumer Court

21. A Consumer Court established under the Punjab Act is a special court with both civil and criminal jurisdictions. However, it is not a civil court in the sense of the Code of Civil Procedure 1908 because a petition, claim or complaint brought before it is not treated as a suit or plaint, and it does not pass a decree. Similarly, it cannot be termed a pure criminal court because of its limited criminal provisions. This indicates the uniqueness of the Consumer Court and its proceedings. For this reason, the Legislature thought it necessary to enact section 30(4) to clarify that every proceeding before the Consumer Court shall be deemed a judicial proceeding. In the normal course, such deeming provisions are not required because pure civil and criminal processes are always judicial in nature.

22. The draftsman has interchangeably used the terms “claim” and “complaint” throughout the Punjab Act without considering that they have different legal meanings. It is, however, important to point out that he has not used them in the sense contemplated by the Code of Criminal Procedure 1898. This view finds support by the fact that Part VIII of the Punjab Act, which deals with proceedings before the Consumer Court, is titled “*Disposal of Claims and Establishment of Consumer Courts.*” This Part begins with section 25 and is also

captioned as “filing of claims.” Furthermore, sections 25 to 31 deal with the civil rather than a criminal remedy.

Application of CPC in proceedings before the Consumer Court

23. There is no provision in the Punjab Act which says that CPC would apply to the cases before the Consumer Court. Nonetheless, section 30(3) of the Act, reproduced below, states:

(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.

24. Since section 30(3) of the Punjab Act grants the Consumer Court some specific powers that civil courts have under the CPC, the remainder are excluded by necessary implication. The following Latin legal maxims lend support to this interpretation: (i) *Expressio unius est exclusio alterius* (the express mention of one thing is the exclusion of the other) and (ii) *Expressum facit cessare tacitum* (what is expressed makes what is implied silent). In *Union of India and another v. Shardindu*, (2007) 6 SCC 276, the Indian Supreme Court held that when the provision’s language is plain and unambiguous, the question of supplying *casus omissus* does not arise. The court can interpret a law but cannot legislate. In *Reference No.01 of 2012* (PLD 2013 SC 279),⁷ the Supreme Court of Pakistan held:

“A *casus omissus* can, in no case, be supplied by the court of law as that would amount to altering the provision. ‘It is not our function, as was held by Mr. Justice Walsh, in the case of *Attorney General v. Bihari, re Australia Factors Limited* (1966) 67 S.R. (N.S.W.) 150, to repair the blunders that are to be found in the legislation. They must be corrected by the legislator’. A court of law is not entitled to read words into the Constitution or an Act of Parliament unless clear reason is found within the four corners of either of them.”

⁷ Reference by the President of Pakistan under Article 186 of the Constitution.

25. In India, section 13(4) of the repealed Consumer Protection Act of 1986 and section 38(9) of the Consumer Protection Act of 2019 currently in force provide for a limited application of the Indian Code of Civil Procedure, similar to section 30(3) of the Punjab Act. The Supreme Court considered section 13(4) *supra* in New India Assurance Company Ltd. v. Srinivasan (AIR 2000 SC 941) and ruled:

“10. We have already indicated above that the Code of Civil Procedure has been applied to the proceedings under the Consumer Protection Act only to a limited extent. If the intention of the Legislature was to apply the provisions of Order 9 also to the proceedings under the Consumer Protection Act, it would have clearly provided in the Act that the provisions of Order 9 would also be applicable to the proceedings before the District Forum or the State Commission or, for that matter, before the National Commission. If the Legislature itself did not apply the rule of prohibition contained in Order 9 Rule 9(1), it will be difficult for the Courts to extend that provision to the proceedings under the Act.”

26. Reference may also be made to Ethiopian Airlines v. Ganesh Narain Saboo (AIR 2011 SC 3495) wherein the Supreme Court of India observed:

“58. However, notwithstanding the fact that proceedings of the National Commission are ‘suits’ under the Carriers Act, vide the *expressio unius* principle, the Consumer Protection Act, 1986 clearly enumerates those provisions of the CPC that are applicable to proceedings before the consumer fora. Such provisions include 13(4), in which the Consumer Protection Act, 1986 vests those powers vested in a civil court under the CPC to the District Forum. However, according to the principle of *expressio unius*, because the Legislature expressly made the aforementioned provisions of the CPC applicable to the consumer proceedings, the Legislature is, therefore, deemed to have intentionally excluded all other provisions of the CPC from applying to the said proceedings. This is particularly true since, as explained above, the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures, distinguishable from those required under the CPC, that the consumer redressal fora must follow. Therefore, since the Consumer Protection Act does not state that section 86 applies to the consumer fora’s proceedings, that Section of the CPC should be held to be not applicable.”

27. I am inclined to adopt the above interpretation for the purposes of the Punjab Act for an additional reason that its object is to settle consumer complaints as expeditiously as possible. The application of CPC can delay the disposal of such complaints because technicalities complicate the trial.

28. The law in our country is well recognized that unless there is a specific provision to the contrary in any special or local law, the ordinary rules of procedure apply. In Bambino Ltd. v. Selmor

International Ltd. and another (PLD 1983 SC 155), the petitioners filed an ejectment petition against respondent No.1, the tenant of Room No. 27 of their building, in which the Rent Controller passed an *ex parte* eviction order. Following that, they moved an execution application in which the notice was served through publication in a newspaper. They also obtained an order of police aid. However, before the eviction order could be executed, the petitioners took possession of the room. They entered into a lease agreement with respondent No. 2, admitted him as a tenant, and began collecting rent. They did all of this without withdrawing the aforementioned execution application. When respondent No. 2 came to know that the ejectment order issued by the Rent Controller would be executed against him, he obtained a stay order from him, but by the time the court official could serve it, the process of eviction had already been completed. Nonetheless, he applied under section 151, read with section 141 CPC, for restitution of possession of the property. The Supreme Court of Pakistan held that under section 22 of the Sind Rented Premises Ordinance, 1979, an order passed by the Rent Controller or the appellate authority has to be executed in the manner determined by them. Consequently, the Rent Controller was competent to adopt any procedure he deemed suitable for the execution of his order. Order XXI Rules 100 and 101 CPC amply empower an Executing Court to investigate and adjudicate on the issue of dispossession from immovable property by the holder of a decree for possession of such property of a person other than the judgment-debtor. If the court is satisfied after such investigation that the applicant was in possession of the property on his own account or on behalf of some one other than the judgment-debtor, the Executing Court has the jurisdiction to direct that the applicant be put into possession of the property. It is a procedural rule based on equitable principles and the canon that a decree passed by the court ordinarily binds the parties to the suit, their assignees and anyone claiming through them.

29. In **Mian Hakim Ullah and others v. Additional District Judge/Tribunal, Nowshera, and others** (1993 SCMR 907), the appellant challenged the SDO's notices issued under section 3(1) of the

North-West Frontier Province Removal of Encroachments Act 1997 before the tribunal established under section 12 of that Act. During the hearing of the appeal before the Supreme Court, the Advocate General contended that the rules framed under the Act merely provide for a referral to the tribunal and do not prescribe any procedure for filing a suit. Hence, it could not be brought before the tribunal directly. The Supreme Court ruled that the failure of the Government to make the necessary rules cannot render the Act inoperative and the tribunal dysfunctional. It observed that section 14(3) of the Act grants the tribunal the power of a civil court in matters such as summoning and enforcing the attendance of any person and examining him under oath, receiving evidence on affidavit, compelling production of documents and issuing commissions for examinations of witnesses or documents. Hence, the tribunal's proceedings have all the necessary attributes of the proceedings of the civil court. The Supreme Court further stated that if the existing rules do not provide for a particular procedural matter relating to the proceedings before the tribunal, it is free to follow the principles contained in the CPC to the extent it deems essential.

30. In *Haji Khudai Nazar and another v. Haji Abdul Bari* (1997 SCMR 1986), the petitioners filed an application under Order XLI Rule 17 CPC in the High Court for recalling an *ex parte* judgment in a rent case, stating that their counsel reached the rostrum when it was being dictated and had not yet been signed. Further, the delay in getting to the Court was due to factors beyond his control. Before the Supreme Court, the question was whether CPC applied to the proceedings before the Rent Controller under the West Pakistan Urban Rent Restriction Ordinance, 1959, because it does not expressly exclude it. The Supreme Court ruled that CPC does not apply to such proceedings unless specifically made applicable by the rent laws. However, its principles may be applied in the facts and circumstances of the case so long as they do not conflict with the rent laws and advance the cause of justice. It further stated:

“It is now well-settled that in proceedings before Court or Tribunal of *quasi-judicial* nature, even if there is no provision for setting aside an *ex parte* order, the Court/Tribunal would be empowered to exercise such power by applying principles of natural justice. Such

provisions which enshrine principles of natural justice have to be read in the statute which do not specifically debar such a remedy. Therefore, even without applying the provisions of CPC in terms, the procedure provided under Order IX Rules 9 and 13 and Order XLI Rule 17 CPC can be applied by the Controller or the High Court in rent proceedings.”

31. In *Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami and others* (2007 SCMR 818), the petitioner had taken possession of the property in terms of the order of the Rent Controller. The respondents filed a petition before him against the petitioner under Order XXI Rules 100, 101 and 103 CPC on the ground that the property was allotted to their predecessor. The Supreme Court ruled that the provisions of CPC are not *stricto sensu* applicable to the rent proceedings, but the Rent Controller may follow the equitable principles thereof.⁸ It further stated that section 144 CPC contains an equitable principle which can be invoked in ejectment cases.

32. To sum up, the Code of Civil Procedure applies to the proceedings before the Consumer Court to the extent specified in section 30(3) of the Punjab Act. Nevertheless, it may also adopt its general principles insofar as they advance the interests of justice.

Procedure for trial of offences

33. The Punjab Act does not specify the procedure the Consumer Court would follow to try the offences. However, section 5 of the Code of Criminal Procedure, 1898, reproduced below, can be helpful in this regard:

5. Trial of offences under Penal Code.— (1) All offences under the Pakistan Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) **Trial of offences against other laws.**— All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

⁸ In this regard the Supreme Court referred to *Ayub Khan and another v. Fazal Haq and others* (PLD 1976 SC 422) and *Bambino Ltd. v. Selmor International Ltd. and another* (PLD 1983 SC 155).

Appeal to the High Court

34. As discussed above, the proceedings before a Consumer Court may be civil or criminal. The said proceedings determine the nature of an appeal against a decision. If the proceeding is based on section 32(1) of the Punjab Act, the nature of the appeal will be criminal, while in the rest of the cases, it will be civil.

The case at hand

35. Section 33 of the Punjab Act provides that any person aggrieved by any final order of the Consumer Court may prefer an appeal in the Lahore High Court within 30 days. In the present case, the Appellant filed a claim for damages with the Consumer Court for an alleged faulty service of Daraz. The provisions of CPC do not strictly govern the proceedings before a Consumer Court. It can apply only its equitable principles. Thus, Order VII Rule 11 CPC is not applicable in terms, but the Consumer Court has the authority to decide on the maintainability of a claim. Since the Consumer Court has passed the Impugned Order of 07.04.2022 in the exercise of its civil jurisdiction, no criminal appeal is competent against it. As a result, the office objection is upheld.

36. Inasmuch as the decision of this case turns on the question of maintainability, I need not discuss its merits. **Appeal dismissed.**

(Tariq Saleem Sheikh)
Judge

Announced in open Court on _____

Judge

Approved for reporting

Naeem

Judge