

Stereo. H C J D A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

F.A.O. No.39719 of 2023

**Tranzum Courier Service (TCS) Private Limited &
another**

Versus

Samreen Boota

J U D G M E N T

Date of Hearing	15.12.2023
For the Appellants	Mr. Shakoh Zulqurnain and Ms. Amna Iqbal, Advocates
For Respondents	Mr. Majid Nadeem, Advocate.

Raheel Kamran J:- Through this appeal under Section 33 of the Punjab Consumer Protection Act, 2005, the appellants have assailed vires of the judgment dated 30.03.2023 passed by the District Consumer Court, Sialkot whereby they were directed to return the booking price of the parcel and were also burdened to pay a sum of Rs.150,000/- as damages within a period of one month.

2. Brief facts of the case are that the respondent was a government school teacher who, in order to get her transfer at a place nearest to her residence, approached the Education Department, Sialkot through an application for which purpose the original educational certificates were required to be attested by the Higher Education Commission (HEC). The respondent hired services of the appellants in order to dispatch her educational certificates to the HEC for their verification. On 30.05.02022, the respondent got booked a parcel with the appellants containing original certificates/degrees with transcript of BS in Botany

through parcel tracking No.1466477481. The appellants assured delivery of such shipment within a period of 2 to 3 days. Although the said shipment was delivered but surprisingly the documents were not found therein, which were alleged to have been lost in between the transit, therefore, the appellants moved an application to the concerned police station qua loss of the documents. The respondent filed a claim under Section 25 of the Punjab Consumer Protection Act, 2005 ('Act') which was allowed by the trial court with the direction to the appellants to return the booking price of the parcel amounting to Rs.121/- and pay a sum of Rs.150,000/- as damages, hence this appeal.

3. Learned counsel for the appellants contends that claim of the respondent before the District Consumer Court was barred by limitation. While elaborating this plea, he has pointed out that the respondent admittedly acquired knowledge of the defective service on 13.06.2022 when her parcel was received back from the Higher Education Commission with the noting that "original are missing". He adds that the legal notice under Section 28(1) of the Act in the name of service provider is a mandatory requirement of law, however, the same has not been satisfied in this case. He further contends that as per legislative scheme envisaged under Section 28 of the Act, when the consumer acquires knowledge of the defect or fault in the service, limitation period of 30 days provided under Section 28(4) of the Act starts to run. It is during this period that the consumer has to first put his grievance before the service provider for rectification of the defect and provide fifteen days to the service provider to redress his grievance as required under Section 28(2) of the Act and if the service provider fails to respond within the stipulated fifteen days then the consumer can file a claim before the District Consumer Court. In support of his contention, he has relied upon judgment of the Supreme Court of Pakistan in the case of Messrs Pak Suzuki

Motors Company Limited through Manager v. Faisal Jameel Butt and another (PLD 2023 SC 482).

4. Conversely, learned counsel for the respondent has supported the impugned decision while contending that the objections with regard to limitation and maintainability of the claim has been reasonably addressed by the District Consumer Court as manifest from the impugned decision. He maintains that the cause of action in this case accrued on 21.07.2022, which is the date of knowledge qua loss of documents, the respondent sent legal notice to the petitioners on 03.08.2022 within the stipulated period of 15 days as mentioned in Section 28(2)(3) of the Act and that the claim has been filed within the period prescribed under Section 28(4) of the Act. .

5. Heard. Available record perused.

6. The primary question raised for adjudication in this appeal is whether claim of the respondent was barred by limitation as provided in Section 28(4) of the Act, therefore, the same was liable to be rejected?

7. Section 28 of the Act reads as follows:-

28. Settlement of Claims.— (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the

warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services.

8. Section 28 *ibid* has been subject matter of interpretation before the Supreme Court of Pakistan in the case of Messr Pak Suzuki Motors Company Limited v. Faisal Jameel Butt (PLD 2023 SC 482) wherein it has been, *inter alia*, held that legal notice under Section 28(1) of the Act is a mandatory requirement of law to grant both the consumer and the manufacturer or service provider to address the defects or faults in the product or service before the matter proceeds to litigation. It has been further held therein that even though no limitation period is provided for issuance of a legal notice under Section 28(1) of the Act, it is apparent that Section 28(4) of the Act in unequivocal terms stipulates and clarifies that a claim with regard to a defective or faulty product or service, or contravention of the provisions of the Act by the manufacturer or service provider has to be filed within 30 days of arising of the cause of action which, in such circumstances where a product or service is faulty, therefore, arises the moment the consumer obtains knowledge that the product or service is defective or faulty.

It has been further held in the aforementioned judgment that the legislative intent behind sub-sections (1), (2) and (3) of Section 28 of the Act is to grant rights to both the consumer and the manufacturer or service provider to address the defects or faults in the product or service before the matter proceeds to the litigation. It ensures that the consumer firstly brings the issue to the attention of the manufacturer or the service provider through a written notice, so that the defect or fault is rectified and it fulfills its obligation to the consumer before the consumer has to file a claim before the District Consumer Court, so that there is a possibility of settling the claim of the consumer without the need to initiate litigation, which would be more cumbersome for a

simple consumer. At the same time, it also affords the manufacturer or the service provider the right to respond to the notice within a specified timeframe, enabling it to address any legitimate concerns, protect its reputation and mitigate potential costs that may be incurred under the Act. In effect, it provides for a mechanism to settle the dispute before initiation of litigation and the same cannot be construed as giving a fresh cause of action wherefrom the 30-day limitation provided under Section 28(4) would commence. Therefore, when the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under Section 28(2). It is only after the manufacturer or the service provider responds to the written notice, or where he fails to respond within the stipulated 15-days period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists. The consumer can still file a claim before the District Consumer Court by giving sufficient cause for filing the claim beyond 30 days which is to be examined by the District Consumer Court, as per the provisos to Section 28(4) of the Act.

9. It is manifest from plain reading of sub-section (4) of Section 28 of the Act that for it to be adjudicated, a claim should be filed within 30 days of arising of the cause of action. That means, for the purpose of limitation under Section 28(4) of the Act, the knowledge attributed to a claimant alleging defective service must be sufficient and complete enough to constitute accrual of *cause of action*, which has been defined to mean every fact which will be necessary for a claimant to prove, if traversed, in order to support his or her right to judgment. Reliance in this

regard is placed on judgment of the Privy Council in the case of Muhammad Khalil Khan and others v. Mahbub Ali Mian (**PLD 1948 Privy Council 131**). Incomplete knowledge of facts regarding defective service could hardly provide basis for constituting cause of action and running of limitation under Section 28(4) of the Act.

10. In this case, cause of action was claimed to have accrued to the respondent on 21.07.2022 when the appellants informed the respondent that her documents had been lost and *Rapt* in that regard was got incorporated. The appellants/defendants in para No.5 of their written reply admitted to have informed the applicant/respondent regarding loss of the documents, however, did not mention the date on which it was done. The dates of 15.07.2022 and 21.07.2022, as mentioned in para No.3 of the statement of claim, have not been controverted by the appellants in their reply. Even the representative of TCS while appearing in the witness box as RW-1 did not state anything about the date on which information qua loss of documents was passed on to the respondent. However, the appellants/defendants for the first time in the appeal have taken the plea that the respondent had acquired the knowledge on 13.06.2022 when the parcel was received back, which is untenable. Even otherwise, on 13.06.2022 when the parcel had received back it was not clear who was at fault i.e. TCS or HEC. The legal notice, as per evidence produced by the respondent, was issued to the appellants on 03.08.2022 and if the period of thirty days is considered from 21.07.2022, the date of accrual of cause of action, then the claim was to be filed on or before 20.08.2022 and the same was filed on 18.08.2022, therefore, plea of the appellants that claim of the respondent is barred by limitation is misconceived.

11. As regards plea of the appellants that requirement of Section 28(1) of the Act has not been fulfilled, suffice it to say that the same is also misconceived inasmuch as the copy of notice

under Section 28(1) of the Act is available with file as Ex.P10 to Ex.P11/1 and during the evidence Muhammad Rashid, Record Keeper, GPO Sialkot was produced as PW-2 who deposed that receipts Ex.P2 and Ex.P2/1 were delivered from the Post Office and Ex.P3 and Ex.P4 were receipts regarding delivery of the parcels. PW-2 was not cross-examined and even no objection over authenticity of the aforementioned receipts has been raised by the appellants' counsel. Therefore, the respondent successfully established that the legal notice was issued and delivered to the appellants-company.

12. Insofar as claim of the respondent is concerned, admittedly the appellants-company itself lodged a complaint before the SHO Police Station Civil Lines, Sialkot (Ex.P1/1) that the parcel of the respondent containing original degree and transcript was being transmitted which had lost and Nadeem Ahmad Chughtai, Assistant Operation Manager, TCS (RW-1) during cross-examination admitted it correct that documents of claimant were lost during the possession of TCS. Even in the written reply to the application under Sections 25 & 28(4) of the Act, the appellants had offered that they were ready to pay expenses to be incurred upon reparation of degree of the respondent. In these circumstances, the respondent successfully proved his claim before the District Consumer Court.

13. As regards plea of the appellants that no loss has been caused to the respondent for the reason that duplicates have been issued to her and no specific loss in that head has been claimed, suffice it to state that against total claim of over four million rupees, the general damages of Rs.150,000/- have been awarded to the respondent under the rule of thumb which cannot be termed as arbitrary or unreasonable to compensate for the harm or mental agonies suffered by the respondent owing to defective quality of service provided by the appellant in this case. Reliance in this regard is placed on the case of TCS (Private) Limited v. Mst.

Haseena Begum (PLD 2022 Lahore 524). Therefore, findings of the District Consumer Court are unexceptionable.

14. For the foregoing reasons, this Court finds no illegality or material irregularity in the impugned judgment warranting interference in exercise of appellate jurisdiction. This appeal, being devoid of any merit, is accordingly **dismissed**.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on 20.03.2024.

JUDGE

Saeed Akhtar