

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Crl. Appeal No. 168/2018

Muhammad Naveed

Versus

Rehman Mobile Zone, etc.

Appellant by: Mr. M. Furqan Shabbir and Mr. M. Asif, Advocates.

Respondents by: Mr. Hasnain Haider Thaheem, State Counsel.
Respondent No.1 *Ex-parte*.

Date of Decision: 28.09.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Crl./Consumer Appeal, the appellant has assailed the order dated 21.04.2018, passed by learned Additional Sessions Judge (East), Islamabad, whereby, complaint under Islamabad Consumer Protection Act, 1995 filed by appellant was dismissed.

2. Learned counsel for the appellant contends that appellant purchased mobile phone Samsung E-7 from respondent No.1 against the sale consideration of Rs.15,500/- with assurance that warranty as well as money back guarantee of two days is available to the appellant; that appellant after purchasing the said mobile observed that same is not in working condition and immediately approached respondent No.1 on 19.12.2017, whereby it was agreed that appellant shall return the mobile phone against the return of Rs.12,500/- but respondent No.1 also insulted the appellant in presence of other customers due to which appellant got issued legal notice and prayed for recovery of his balance amount of Rs.3,000/- which was retained by respondent No.1 with additional charges and damages; that learned trial Court after issuing notice to respondent No.1, heard the parties and dismissed the complaint without framing issues and recording evidence, which is violation of procedure provided in Islamabad

Consumer Protection Act, 1995 as well as violation of Article 10-A of the Constitution of Islamic Republic of Pakistan.

3. Conversely learned State Counsel contends that no receipt has been appended by the appellant in the consumer complaint, even used mobile phone was purchased by the appellant which was without warranty, nor any assurance was given by respondent No.1 and appellant has received Rs.12,500/- with his free will and is not entitled for damages; that learned trial Court has rightly dismissed the complaint.

4. No one has put appearance on behalf of respondent No.1 despite service of notice, as a result of the same he has been proceeded *ex-parte* vide order dated 28.07.2020.

5. Arguments heard, record perused.

6. Perusal of record reveals that appellant purchased mobile phone Samsung Ii-7 against total sale consideration of Rs.15,500/- on 17.12.2017 but as per his version mobile was not in working condition, therefore, he returned the same within two days as oral money back guarantee was extended by respondent No.1 but respondent No.1 has returned Rs.12,500/- only and deducted Rs.3,000/-, even insulted the appellant in front of other customers. Learned Consumer Court while considering this aspect issued notice to respondent No.1, who filed written statement and stated that:-

That the fact of the matter is that the complainant purchased the mobile phone from respondent and came back on 23-12-2017 to return it. The respondent told the complainant that after use of Mobile phone for many days, same cannot be return and is against our policy because Mobile Phone could be use in criminal activities however same can be sold on market price with a copy of complainant's ID. The complainant agreed to hand over copy of his CNIC and sold the Mobile Phone against the consideration amount of Rs.12,500/- with his own free will.

7. While considering the above admitted facts, appellant is aggrieved with dismissal of complaint whereby his claim for balance amount of Rs.3,000/- was turned down.

8. I have confronted the appellant's counsel to justify the concept of money back guarantee as claimed by him under the law whether any company provides money back guarantee of used mobile, whereby he contends that there is no such law but respondent has orally made averments. This aspect is not considerable and primary allegation of falsely giving to a public warrantee or guarantee of performance is not justified by the appellant especially when there is no documented thing available on record to that extent. The concept of warrantee under the law has to draw from sale receipt which could only be presumed if the mobile phone is not used and appellant purchased mobile phone from an authorized dealer of Samsung company but this is not the case of appellant rather it appears that appellant in order to harass the respondent and to extort an amount of Rs.3,000/- initiated these proceedings which are otherwise wastage of precious time of trial Court as well as this Court for such a meager amount.

9. I have also confronted the appellant with the fact that said mobile is available with him, whereby he states that mobile was returned to respondent No.1 against the amount of Rs.12,500/-, who has further sold out the same to some other client, hence, primary allegation of non-functioning of mobile could not be assessed, nor the same is justified from any technical report, therefore, entire allegation referred in the complaint is not proved on record and as such no further evidence is required.

10. In view of above, no illegality has been observed in the impugned order and learned trial Court has rightly dismissed the complaint. Instant appeal is not maintainable under the law and the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid