

**JUDGMENT SHEET**

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

**Crl. Appeal No. 251 of 2019**

Mumtaz Yousaf and another  
Vs.  
Naseer Younas, etc

Appellants By:	Mr. Ahmed Ejaz Yousaf, Advocate
Respondents By:	Ch. Muhammad Junaid Akhtar, Advocate.
Date of Hearing:	06.03.2020.

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***Ghulam Azam Qambrani, J:*** Through the instant appeal the petitioners seek setting aside of order, dated 22.05.2019 and a direction to the Consumer Court to decide the complaint of the appellants on merits.

2. Brief facts of the case are that the appellants filed a complaint against the respondents under the Islamabad Consumer Protection Act, 1995 stating therein that the respondents are guilty of “unfair trade practice” and “False Advertisement” as they are dealing in an insurance business under the garb of Banking, which constitutes an offence under the above referred law; that learned Judge Consumer Court issued notices to the respondents for appearance but thereafter proceeded to dismiss the complaint of the appellants for non-prosecution vide order, dated 26.02.2018; that on the said date the title of the complaint in the cause list was wrongly mentioned as “**Mumtaz Yousaf Vs. Nasreen Jawed**”, which became the reason for dismissal of the same. The appellants moved an application for restoration of the same, which was returned to the appellants with the advice to prefer a fresh complaint instead of getting the earlier one restored. On 15.05.2018, the appellants moved a fresh

complaint and the learned Judge Consumer Court issued notices to the respondents. On 19.02.2019, an application for non-maintainability of the complaint was moved on behalf of respondents No.2 to 4 with the averments that the subsequent complaint filed by the appellants is not maintainable. The learned Judge Consumer Court after hearing the learned counsels for the parties accepted the application filed by the respondents and the complaint filed by the appellants was dismissed vide order, dated 22.05.2019. Hence, the instant appeal.

3. Learned counsel for the appellants submitted that the learned trial Court has failed to take into consideration that the Islamabad Consumer Protection Act, 1995 is a special law promulgated with the sole objective of protecting and promoting the interests of the consumers, as such, purposely no procedural code has been made applicable so that technicalities of all sorts should be avoided; since the impugned order is based on technicalities, therefore, the same is not maintainable and is liable to be set aside. Further contended that learned Judge Consumer Court did not appreciate the fact that all consumer complaints are to be decided on merits in a summary manner under Section 8 of the Islamabad Consumer Protection Act, 1995, regardless of all procedural technicalities. Next contended that the appellants filed an application for restoration of the earlier complaint dismissed due to non-prosecution vide order, dated 26.02.2018, which was informally returned to the appellants by the learned Judge with the advice that since there is no bar in filing of a fresh complaint, it would be convenient for the appellants to prefer a fresh complaint instead of getting the earlier one restored, but even then the fresh complaint was dismissed on the ground that the appellants were not entitled to file a fresh complaint on the same facts; that the impugned order has been passed in disregard of the

fact that there is no legal bar in filing of a fresh complaint after dismissal of an earlier one for want of prosecution; therefore, the impugned order suffers from material infirmities and is not tenable; that the impugned order is based on surmises and conjectures and has been passed in a slipshod manner without appreciating the purpose of the Islamabad Consumer Protection Act, 1995.

4. On the other hand, learned counsel for the respondents vehemently opposed the arguments advanced by the learned counsel for the appellants contending that the instant appeal is not maintainable; hence the same is liable to be dismissed.

5. Arguments heard, record perused.

6. From perusal of the record, it has been observed that earlier the appellants filed a complaint before the learned Additional Sessions Judge/Consumer Court, Islamabad, contending therein that the respondents are guilty of “*unfair trade practices*” and “*false advertisement*”, as they were dealing in insurance business under the garb of Banking. The appellants visited Habib Bank Limited, NARC Branch, Park Road, Islamabad, for the purpose of opening a Bank Account, where respondent No.1 offered his help to the appellants and persuaded/induced the appellants to open the proposed account against an amount of Rs.2,00,000/- and Rs.1,50,000/- respectively and thereafter, the appellants received a letter from Jubilee Life Insurance, where the appellants were informed that they had been registered for a policy, whereas the appellants had never subscribed for any insurance policy. The appellants immediately approached respondent No.1, who being repentant, asked the appellants to return the insurance policy documents to him and promised to deposit the money back into the respective Bank Accounts of the appellants. The appellants had

been visiting Habib Bank but of no avail. The appellants came to know that respondent No.1 had withdrawn their money from the respective accounts and purchased insurance policies in their name without their permission and consent, as such, respondent No.1 has deprived the appellants from their hard earned money and the profit which was likely to accrue thereon, if respondent No.1 had not withdrawn the amount from their accounts. The complaint was dismissed due to non-prosecution vide order, dated 26.02.2018 however, the appellants filed second complaint narrating the same story as mentioned in the earlier complaint, which was dismissed vide order, dated 22.05.2019 on the ground that the appellants did not file an application for restoration of their earlier complaint, hence, they are not entitled to file a fresh consumer complaint on the same facts.

7. Perusal of the impugned order reveals that the same has been passed by the "Authority" in terms of Islamabad Consumer Protection Act, 1995. Section 10 of *The Islamabad Consumers Protection Act, 1995* deals with the concept of appeal, the same is reproduced as under:-

*"10. Appeal. - An appeal against the order of Authority shall lie to the High Court and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeals to the High Courts shall, mutatis mutandis, apply".*

8. The above referred provision only focuses the appeals to the High Court, which means that Sections 410 and 417, Cr.P.C. were applicable. The same are reproduced hereunder:-

*"410. Appeal from sentence of Court of Session. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.*

*417. Appeal in case of acquittal. (1) Subject to the provision of subsection (4), the Provincial Government may, in any case, direct the Public Prosecutor to*

*present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.*

*(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.*

*(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.*

*(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.*

*(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)".*

9. In view of above discussion, it is clear that against the order of Consumer Court, an appeal lies before the High Court in case of conviction or acquittal in terms of Sections 410 & 417 Cr.P.C. In the instant case, the earlier consumer complaint filed by the appellants was dismissed for non-prosecution vide order, dated 26.02.2018, in presence of the learned counsel for the respondents but the appellants failed to file any application for restoration of the same and instead filed second complaint narrating the same facts and circumstances after about three months, which was dismissed vide order, dated 22.05.2019.

10. While considering the concept of appeal in Criminal Procedure Code, I am fully convinced that appeal under Section 10 of *Islamabad Consumers Protection Act, 1995* is only maintainable against the order of the authority, which is final in its nature and passed after conclusion of the proceedings. Even otherwise, *Islamabad Consumers Protection Act, 1995* does not provide any revisional powers to the High Court, which could cover such kind of

eventuality and when the legislature has not provided such provision to cover interim orders, then the intent has to be applied in strict manner.

11. For what has been discussed above, instant appeal is not maintainable, therefore, the same is hereby **dismissed**.

~~Ghulam Azam Qambrani~~  
Judge

Announced in Open Court, on this 15th April 2020.

~~15th April~~

Rana. M. Ift