

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.93-A/2018

JUDGMENT

Date of hearing.....02/11/2018.....

*Petitioner(s)....(Khan Ahsan) by Mr. Muhammad Jehangir Khan, Advocate
.....*

*Respondent(s)....(Sheikh Umar and another)by Mr. Faraz Ahmad, Advocate
.....*

SYED MUHAMMAD ATTIQUE SHAH, J: This

appeal under section 17 of the Khyber Pakhtunkhwa Consumers Protection Act, 1997 by Khan Ahsan, appellant is directed against the order dated 09.04.2018 passed by learned Judge Consumer Court, Haripur, whereby, the complaint filed by the appellant against the respondents was returned to him for want of territorial jurisdiction.

2. Brief facts leading to filing of instant appeal are that appellant Khan Ahsan filed a complaint before the learned Consumer Court on 04.04.2017 against the respondents under Khyber Pakhtunkhwa Consumer Protection Act, 1997, wherein, he averred that a deal regarding purchase of 'Pea Seed' variety Meteor of 300

bags had taken place between the complainant and the respondents through their representative / salesman, who visited his shop situated at Sarai Gadai, Haripur, for a sum of Rs.1,380,000/- on 31.07.2016; that the complainant paid Rs.20,000/- in cash and also delivered a cheque bearing No.06139367 dated 01.08.2016 of United Bank Limited for a sum of Rs.380,000/- to the said representative of the respondents and thereafter, he transferred Rs.400,000/- and Rs.580,000/- in the account No.218187609 of respondents on 09.08.2016 and 10.08.2016; that the appellant and other farmers sowed the said seed, however the production of pea crop was about 10 to 15 percent due to defective and mixed seed, in view of report of seed Analyst/ Seed Certification Officer of Federal Seed Certification & Registration Department Government of Pakistan, Abbottabad; that the complainant and others sustained huge loss due to substandard seed provided by the respondents.

3. The respondents were summoned, who contested the complaint and filed an application raising objection regarding territorial jurisdiction of the Consumer Court under section 12 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997, on the grounds that the entire deal

was struck and amount was paid at Gujraanwala, where the respondents resides. The appellant contested the said application by filing reply thereto. The learned Consumer Court, Haripur after hearing the parties, returned the complaint for lack of territorial jurisdiction vide order dated 09.04.2018.

4. Arguments of learned counsel for the parties heard and record perused.

5. In view of admitted factual background, it has to be seen whether Consumer Court, at Haripur has the jurisdiction to entertain the complaint of the appellant against the respondents or otherwise. The governing provisions relating to jurisdiction of Consumer Court to entertain complaint has been provided under Section 12 of the Khyber Pakhtunkhwa, Consumer Protection Act, 1997, which is reproduced below for ready reference and convenience:-

12. Jurisdiction of the [Court].---[Subject to the provisions of this Act, the Court shall have jurisdiction to entertain complaints within the local limits of whose jurisdiction,---]

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case either the permission of the [Court]

is given, or the opposite parties who do not reside, or carry on business, or personally work for gain, as the case may be, acquiesce in such institution; and
(c) the cause of action wholly or in part arises."

6. The appellant has three options under the said provisions to sue; where the respondents or each of the respondents actually and voluntarily resides, carries on business or personally works for gain (clause a); or, in case there are more than one respondents, at the time of the institution of complaint actually or voluntarily, carries on business or personally works for gain (clause 'b'); or, at the place where the cause of action, wholly or in part, arises (clause 'c'). If the situation in a particular case is not covered by clauses (a) and (b), the suit can be instituted by virtue of clause (c), at the place where cause of action wholly or in part, arises.

7. This Court finds that the deal had taken place between the parties through representative of the respondents at Haripur and payment of the amount was also made over there and the seed was also sowed at Haripur and the Seed Certification Officer also conducted inspection of the crops at Haripur and submitted his report regarding the seed provided by the respondents. Thus, in view of the peculiar facts and circumstances of the present

case, the cause of action arose to the appellant under clause 'c' of the Act *ibid*, at Haripur. Therefore, it is very much obvious that the learned consumer Court has the territorial jurisdiction to entertain complaint of the appellant against the respondents and the impugned order of the learned Consumer Court being without legal substance is liable to be reversed.

8. Accordingly, for the reasons stated hereinabove, this appeal is allowed and the impugned order of the learned Consumer Court, Haripur dated 09.04.2018 is set aside and the case is remanded back to the learned Consumer Court to proceed with the complaint filed by the appellant, strictly in accordance with law.

Announced:
Dt.02.11.2018.


J U D G E

/M.Saleem/

(SB) Mr. Justice Syed Muhammad Attique Shah.