

Judgment Sheet**IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

FAO. No.133-2009

Zia Ullah Malik Vs. Nadeem Baig

JUDGMENT

Dates of hearing: - 17.10.2012
Appellant by: - Mr. Naveed Zafar Khan, Advocate
Respondent by: - Nemo for the respondent.

Shahid Waheed, J:- Appellant, Zia Ullah Malik, through this appeal under Section 33 of the Punjab Consumer Protection Act, 2005 has called in question the order dated 6.4.2009, passed by the learned District Consumer Court, Lahore whereby the appellant's complaint was returned.

2. Briefly, the facts giving rise to this appeal are that the appellant is running a registered Firm under the name and style of M/s. Oversease Trading Corporation. The services of the appellant by virtue of an agreement were hired by the Canteen Store Department("CSD") for packing in correct weight the grocery and other items. The appellant for the above said purpose purchased an Electronic Bagging Plant from the respondent. It is worth mentioning here that the above said Plant was also

installed by the respondent at the appellant's premises. The said Plant did not work properly and as a result thereof the appellant suffered losses. In these circumstances, the appellant filed a complaint on 6.04.2009 before the learned District Consumer Court, Lahore against the respondent for the recovery of Rs.2,380,000/- on account of refund of the entire amount paid by the appellant to the respondent as cost of machine, extra cost paid for purchase of new machine and economic losses arising from deficiency and loss of use of product, etc sustained by the appellant due to defective and faulty product of the respondent. Learned District Consumer Court after hearing the preliminary arguments of the appellant returned the complaint vide order dated 6.4.2009 which reads as under:

“The respondents entered into an Agreement dated 20.11.2007 with M/S Overseas Trading Corporation for cleaning and packing of Grocery and other items for CSD, for which purpose a Packing Machine was purchased by the petitioner. The petitioner is running a registered Firm by the name of M/s Overseas Trading Corporation; as such the Corporation does not fall under the definition of a Consumer, as given in the Punjab Consumer Protection Act 2005. This petition is returned to be filed before a proper forum if so advised.

File be consigned after due completion.”

Feeling aggrieved by order dated 6.4.2009, the appellant has filed the instant appeal before this Court.

3. Learned counsel for the appellant submits that the impugned order is against the provisions of law and facts; and, that the learned District Consumer Court has not properly interpreted Section 2(c) of the Punjab Consumer Protection Act, 2005 and therefore, fell in error while returning the complaint.

4. Notice was issued to the respondent but despite service he did not turn up to oppose this appeal and resultantly, he was proceeded against *exparte* vide order dated 12.7.2010.

5. I have heard the learned counsel for the appellant and perused the record appended with this appeal.

6. The sole question which requires determination by this court is as to whether a firm falls within the definition of “consumer” as given in Section 2(c) of the Punjab Consumer Protection Act, 2005. The definition of a “consumer” reads as under:-

“Consumer” means a person or entity who-

- i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for*

any commercial purpose; or

- ii) hires any services for a consideration and includes any beneficiary of such services;*

Explanation:- For the purpose of sub-clause(i), “commercial purpose” does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person.”

The above definition of the term “consumer” is comprehensive one as it covers not only consumer of products but also consumer of services. In relations to products—“consumer” means:

- 1) a person or entity who for a consideration:
 - (i) buys any product, or
 - (ii) obtains on lease any product, and
- 2) any user of such product

There are two exceptions. The term “consumer” does not include a person or entity who obtains any product: (i) for resale, or (ii) for any commercial purpose which does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person. In the above quoted definition of “Consumer”, two words, that is, “person” and “entity” have been used. The word “entity” has been defined in Section 2(e) of the Punjab Consumer Protection Act, 2005 which reads as under:-

“Entity” means as organization that has a legal identity apart from its members.

A firm does not fall within the above referred definition of “entity” as the members of a firm do not form a collective whole distinct from the individuals composing it. The word “person” has not been defined in the Punjab Consumer Protection Act, 2005. In such a situation we can invoke Section 2 of the Punjab General Clauses Act, 1956 which clearly says, that; “In this Act, and in all the Punjab Acts unless there is any thing repugnant in the subject or context, definition given in the General Clauses Act” would apply. Section 2(47) of the Punjab General Clauses Act, 1956 defines a “person” as follows:-

(47) “Person” shall include any company or association or body of individuals, whether incorporated or not”.

In view of above, a firm being a “person” falls within the contemplation of definition of “consumer” as provided in Section 2(c) of the Punjab Consumer Protection Act, 2005 and may competently maintain a complaint against a manufacturer in respect of a product before the District Consumer Court if it satisfies that: (i) there is a transaction of sale or lease; (ii) the sale or lease is of product;(iii)the buying or leasing of product is for consideration; (iv) the obtaining of product is not for resale purpose; and, (v) the

obtaining of product is not for commercial purpose which does not include use by a consumer of product and used by him only for the purpose of his livelihood as a self-employed person. In this regard reference may be made to the case of “Laxmi Engineering Works vs. P. S. G.

Industrial Institute” (AIR 1995 S.C. 1428), “Ravi Kant

and others vs. National Consumer Disputes Redressal

Commission and others” (AIR 1997 Del. 182),

“Department of Enterprise Trade and Investment vs.

The Carrill Group Ltd” (2007) NICA 39, “MFI Furniture

Centre Ltd vs. Hibbert” 160 JP 178, “Benincasa vs. Dentalkit” (1998) All ER (EC) 135.

7. In the above circumstances, this appeal is allowed, order dated 06.04.2009, passed by the learned District Consumer Court, Lahore is set aside and the case is remanded to the learned District Consumer Court, Lahore for a fresh decision in accordance with law. No order as to costs.

(SHAHID WAHEED)
JUDGE

Approved for reporting

JUDGE