

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No.27 of 2019

(*Bin Safeer Supermarket v. Aurangzeb & Others*)

A N D

Miscellaneous Appeal No.32 of 2019

(*Bake Parlor Bread v. Aurangzeb & Others*)

A N D

Miscellaneous Appeal No.53 of 2019

(*Golden Harvest Foods (Pvt) Limited v. Aurangzeb & Others*)

Before:

Sana Akram Minhas J

Appellant in Bin Safeer Super Market
Misc. Appeal No.27/2019: Through, Mr. Farmanullah Khan, Advocate

Appellant in Bake Parlour Bread
Misc. Appeal No.32/2019: Through, Mr. Abdul Shakoor, Advocate

Appellant in Golden Harvest Foods (Pvt) Limited
Misc. Appeal No.53/2019: Through, Mr. Muhammad Naqash,
Advocate

Respondents No.1 to 3 in Misc. Appeal No.27 / 2019

1. Aurangzeb (Advocate) None
2. Bake Parlor Bread Through, Mr. Abdul Shakoor, Advocate
3. District Consumer Protection Court None

Respondents No.1 to 3 in Misc. Appeal No.32 / 2019

1. Aurangzeb (Advocate) None
2. Bin Safeer Supermarket Through, Mr. Farmanullah Khan, Advocate
3. District Consumer Protection Court None

Respondents No.1 to 3 in Misc. Appeal No.53 / 2019

1. Aurangzeb (Advocate) None
2. Bin Hashim Store None
3. Brady's Bread Through, Mr. Abdul Shakoor, Advocate

Date of Hearing: 21-4-2026

Date of Decision: 9-7-2026

J U D G M E N T

1. **Sana Akram Minhas, J**: It is often said that lightning does not strike twice. In the present cases, however (instituted under the *Sindh Consumer Protection Act, 2014* (“**SCPA 2014**”)), it is alleged to have struck not merely twice, but thrice. Three loaves of bread – all three small, all three plain – manufactured by three different companies and purchased from two separate retailers over the course of two days by the same purchaser and complainant (namely, Aurangzeb son of Muhammad Saleh, an advocate (“**Complainant Advocate**”)), are all alleged to have contained mould. Remarkably, these allegations are unsupported by any contemporaneous photographs, and the unconsumed loaves were never produced before the concerned Consumer Court. Such an extraordinary coincidence – or misfortune – naturally warrants a correspondingly high degree of judicial scrutiny.
2. All three Misc. Appeals – filed under the then Section 34¹ of SCPA 2014 – are being disposed of by this common Judgment, as they arise out of substantially similar facts and raise common questions.

Pertinent Facts

3. These Misc. Appeals arise out of Consumer Claims/Complaints instituted under Section 26 of SCPA 2014 before the learned District Consumer Protection Court, Karachi East (“**Consumer Court**”), by the same Complainant Advocate. The Misc. Appeals No.27 and 32 of 2019 assail the Consumer Court’s order dated 11.5.2019 (passed in Consumer Claim No.2/2019), whereas Misc. Appeal No.53/2019 challenges the Consumer Court’s order dated 31.5.2019 (passed in Consumer Claim No.3/2019) (**collectively referred to as “Impugned Orders”**).
4. For ease of reference, the Appellant supermarket/shop (namely, Bin Safeer Supermarket, which has instituted Misc. Appeal No.27/2019) shall hereinafter be referred to as the “**Appellant Shop**”, while the Appellant bread manufacturing companies (which have instituted Misc. Appeals No.32 and 53 of 2019) shall hereinafter collectively be referred to as the “**Appellant Bread Manufacturers**”.

¹ After institution of the present Misc. Appeals, Section 34 of the *Sindh Consumer Protection Act, 2014* was amended by Sindh Act No. XXIX of 2023 (published on 11.8.2023), whereby the appellate forum was changed from the High Court of Sindh to the District and Sessions Court

5. The material averments contained in the two Consumer Claims/Complaints filed by the Complainant Advocate are as follows:
- i) Consumer Claim No.3/2019 (giving rise to Misc. Appeal No.53/2019):
It was alleged that on 3.2.2019, at about 5:35 pm, the Complainant Advocate visited “*Bin Hashim*” shop/store and, inter alia, purchased two small plain loaves of bread marketed under the brand names *BRADY’S* and *DAWN*. According to him, after consuming the breads during the night of 3.2.2019, he fell ill. Upon examining the remaining bread slices the following morning, he allegedly found them to be mouldy.
 - ii) Consumer Claim No.2/2019 (giving rise to Misc. Appeals No.27 and 32 of 2019): It was alleged that on 5.2.2019, at about 9:30 pm, the Complainant Advocate visited the Appellant Shop (namely, *Bin Safeer Supermarket*) and, inter alia, purchased a small plain loaf of bread marketed under the brand name *BAKE PARLOR*. According to him, he thereafter placed the bread in a refrigerator. Upon opening the refrigerator the following morning, he allegedly found the said bread to be mouldy.
 - iii) It was further alleged by the Complainant Advocate in both the Consumer Claims that neither the packaging wrappers of the respective breads nor the receipts issued by the respective shops mentioned the batch numbers, manufacturing dates, or expiry dates of the breads purchased by him; that the packaging wrappers did not disclose the prices of the breads; and that the shelves or display areas where the breads were exhibited for sale also did not display their prices. According to the Complainant Advocate, these omissions constituted violations of the provisions of SCPA 2014.
 - iv) The Complainant Advocate, through his counsel, subsequently issued legal notices dated 4.2.2019 (in respect of *BRADY’S* and *DAWN* breads) and 6.2.2019 (in respect of *BAKE PARLOR* bread) to the concerned Appellants (i.e. Appellant Shop and Appellant Bread Manufacturers), drawing attention to the aforesaid alleged violations of SCPA 2014, demanding compensation for the alleged loss and damage suffered by him, and intimating that, in the event of non-compliance, proceedings would be initiated before the competent Consumer Court.
 - v) The aforesaid legal notices were replied to by the Appellant Shop (*Bin Safeer Supermarket*), through its counsel's reply dated 9.2.2019 (in respect of the *BAKE PARLOR* bread), and by the Appellant Bread

Manufacturer (Golden Harvest Foods (Pvt) Limited), through its counsel's reply dated 13.2.2019 (in respect of the *DAWN* bread). In their respective replies, the concerned Appellants denied the allegations levelled by the Complainant Advocate and asserted that the same were false and mala fide. The Appellant Shop (Bin Safeer Supermarket) further offered to refund the purchase price of the bread, subject to the return of the bread together with its original packaging, in accordance with Condition No.3 printed on the sale receipt. However, the said offer was never availed of.

- vi) On 21.2.2019, the Complainant Advocate filed his two Consumer Claims (No.2 and 3 of 2019) before the same Consumer Court (of Karachi East).

Submissions Of Appellants' Counsel

- 6. Despite being afforded due opportunity, no one appeared on behalf of the Complainant Advocate.
- 7. Learned Counsel appearing for the respective Appellants contended that the Consumer Court erred in law in awarding litigation costs to the Complainant Advocate despite having dismissed his substantive claim for damages for failure to establish any consequential loss. It was submitted that the Consumer Court's findings were internally inconsistent as it adopted inconsistent and irreconcilable approaches by awarding litigation costs in one Consumer Claim (No.2/2019) while declining the same relief in the other (No.3/2019), notwithstanding that both Claims were dismissed on substantially identical facts and on the same legal basis. Counsel argued that, once the Complainant Advocate's substantive claim for damages had been dismissed, the Consumer Court lacked lawful authority to proceed further and impose fines upon the Appellants under the provisions of the SCPA 2014. It was further submitted that the Complainant Advocate had deliberately engaged in forum shopping by instituting the Consumer Claims before the particular Consumer Court in question. They accordingly prayed that the Impugned Orders be set aside.

Questions For Determination

- 8. The questions that fall for determination are:
 - i) Whether the Consumer Court could lawfully award litigation costs to the Complainant Advocate (Respondent No.1), despite having dismissed his claim for damages on the ground that the same had not

been established, particularly when the Consumer Court itself, in the other Impugned Order (which is subject matter of Misc. Appeal No.53/2019), declined to award the same relief after holding that the unsuccessful Complainant Advocate was not entitled to litigation costs.

- ii) Whether, after dismissing the Complainant Advocate's substantive claim for damages, the Consumer Court could nevertheless proceed to impose fines upon the Appellants (two of whom are bread manufacturing companies and one of whom is a supermarket/retailer).

Opinion Of The Court

- 9. The matter has been heard and the record perused.

Award Of Litigation Costs To Losing Party In One Case And Refusal Of Same Relief In Another Case

- 10. Both Consumer Claims arose from substantially identical facts, involved the same parties, and concerned nearly contemporaneous transactions dated 3.2.2019 and 5.2.2019. In each Claim, the Consumer Court dismissed the claim for damages and recorded the same essential finding, namely, that the Complainant Advocate had failed to establish that he had suffered any damage by reason of the alleged defects in the products. Precisely:
 - i) In the case concerning *BAKE PARLOR* bread, the Consumer Court found that the Complainant had neither consumed the bread nor established that he had suffered any damage therefrom, having himself admitted the same during cross-examination (as recorded in paragraphs 17, 18, and 20 of the Impugned Order dated 11.5.2019).
 - ii) Likewise, in the case concerning *BRADY'S* and *DAWN* breads, the Consumer Court held that the allegations remained unsubstantiated in the absence of any laboratory analysis or other reliable scientific evidence (as recorded in paragraphs 18, 23 and 24 of the Impugned Order dated 31.5.2019). Although not expressly noted in the Impugned Order, the Complainant Advocate had also failed to specify in his Claim/Complaint which of the two bread products had allegedly caused him to fall ill.
 - iii) Furthermore, in both Consumer Claims, neither any photographs nor the unconsumed bread products, which allegedly contained the defect complained of, were produced before the Consumer Court, thereby

depriving it of the primary physical evidence necessary for any meaningful examination or scientific analysis.

11. Having dismissed both Consumer Claims for damages on the same factual and legal premise, the Consumer Court nevertheless adopted inconsistent approaches to the award of litigation costs. In Consumer Claim No.2/2019 (relating to *BAKE PARLOR* and involving the Appellant Shop and the Appellant Bread Manufacturer), it awarded litigation costs of Rs.110,000/- to the Complainant Advocate on the ground that the said Appellants (of Misc. Appeal No.27 and 32 of 2019) had neither challenged, during cross-examination, his assertion regarding the litigation expenses allegedly incurred by him nor disputed the invoice produced by him in support thereof, and had not put any suggestion to him questioning either the fact or the quantum of such expenses. However, in Consumer Claim No.3/2019 (relating to *BRADY'S* and *DAWN*, involving the Appellant Bread Manufacturer, while the seller/shop has not preferred any appeal), the Consumer Court declined the very same relief on the ground that, since the Complainant Advocate had failed to establish any damage and the final order had not been passed against the defendants (i.e. Appellant of Misc. Appeal No.53/2019), he was not entitled to litigation costs, placing reliance upon the first proviso to Section 30 of SCPA 2014. The latter approach is consistent with the statutory scheme of SCPA 2014 and the settled principles governing the award of costs.
12. The fact that the Complainant Advocate's assertion regarding his litigation expenses was not specifically challenged in cross-examination could, at the highest, relate to the proof or quantum of such expenses. It could not confer a substantive statutory entitlement to recover those expenses where none otherwise existed. The threshold question was not whether the amount claimed had been disputed, but whether the Complainant Advocate had succeeded in the proceedings so as to become entitled, under the governing statutory framework, to an award of litigation costs in the first place. Since both Consumer Claims were dismissed on substantially identical facts and on the same legal basis, there existed no statutory or principled justification for awarding litigation costs to the unsuccessful Complainant Advocate in Consumer Claim No.2/2019. Although passed subsequently, the Impugned Order dated 31.5.2019 in Consumer Claim No.3/2019, whereby the Consumer Court declined the same relief, further illustrates the inconsistent application of the governing legal principles.

Litigation Costs Under Section 32(g) Of SCPA 2014

13. Turning to Section 32 of SCPA 2014, the award of litigation costs under Section 32(g) cannot be viewed in isolation from its opening words. The

operative part of the provision is expressly conditioned upon the Consumer Court first being “*satisfied that the products complained against suffer from any of the defects specified in the claim or that any or all of the allegations contained in the claim about the service provided are true*”. It is only upon the fulfilment of this statutory precondition that the Consumer Court is empowered to direct the defendant “*to take one or more of the following actions*” specified in clauses (a) to (g), including the power “*to award actual costs including lawyer’s fees incurred on the legal proceedings*” under clause (g).

14. Although the Consumer Court, in Consumer Claim No.3/2019, referred to the first proviso to Section 30 of SCPA 2014, the same conclusion independently follows from Section 32(g), which governs the Consumer Court’s power to award actual costs, including lawyer’s fees. Both provisions proceed on the premise that an award of litigation costs is consequential upon the successful prosecution or defence of the claim and do not contemplate compensating an unsuccessful claimant merely because the quantum of the expenses claimed remained unchallenged. The power conferred by Section 32(g) is not an independent or freestanding jurisdiction to award litigation costs irrespective of the outcome of the proceedings. Rather, it is merely ancillary to, and dependent upon, the grant of one or more of the substantive reliefs contemplated by Section 32. Accordingly, the jurisdiction to award litigation costs arises only where the Consumer Court, having recorded the requisite statutory satisfaction, proceeds to grant substantive relief under the Section.
15. In the present case, although the Consumer Court recorded certain findings regarding the products (which are addressed below), it ultimately dismissed the Complainant Advocate’s substantive claim for damages for failure to establish consequential loss. The claimant/complainant (in this case Complainant Advocate), therefore, remained the unsuccessful party on the principal controversy before the Consumer Court. Once the substantive relief claimed stood refused, the statutory foundation for awarding litigation costs under Section 32(g) also ceased to exist. An unsuccessful claimant cannot claim litigation costs as a matter of right in the absence of any express statutory provision to that effect.
16. The principle that costs ordinarily follow the event requires no reiteration; the successful litigant is ordinarily entitled to recover the costs reasonably incurred in vindicating its rights, whereas an unsuccessful litigant is not entitled to be compensated at the expense of the successful party unless the governing statute expressly so provides or exceptional circumstances, duly recorded, justify a departure from the general rule. Neither SCPA 2014 nor the Impugned Order (dated 11.5.2019) discloses any statutory or other legally sustainable basis for departing from that general principle.

17. The refusal to award litigation costs in the subsequent Consumer Claim (No.3/2019) was legally justified and consistent with the statutory scheme of the SCPA 2014. Conversely, the award of such costs in the earlier Consumer Claim (No.2/2019), merely because the Complainant Advocate's assertion regarding the expenses allegedly incurred by him had not been specifically challenged in cross-examination, overlooks the threshold statutory requirement governing the grant of such relief, lacks any lawful foundation, is inconsistent with the Consumer Court's own subsequent reasoning, and cannot be sustained in law.
18. The impugned direction awarding litigation costs in Consumer Claim No.2/2019 (subject matter of Misc. Appeals No.27 and 32 of 2019) is, therefore, unsustainable in law and is liable to be set aside.

Public Policy Supports The Above Construction Of Section 32(g)

19. The matter does not end there. There is another aspect that warrants consideration. The above construction is also supported by important considerations of public policy. Permitting an unsuccessful litigant to recover litigation costs would not only depart from the general rule that costs ordinarily follow the event, but would also create perverse incentives in civil litigation. Such an approach would encourage the institution of frivolous, unmeritorious or opportunistic claims in the expectation that, even if they fail, the claimant may nevertheless recover litigation costs, which could, in some cases, be artificially inflated. The inevitable consequence would be to impose unnecessary financial and procedural burdens upon defendants compelled to defend unfounded claims, increase the caseload of the courts, divert limited judicial resources from genuine disputes, and undermine the efficient administration of justice.
20. It would also produce serious distortions in the settlement process. A defendant possessing a meritorious defence may be induced to settle even an untenable claim if success on the merits nevertheless carries the risk of bearing the unsuccessful claimant's/complainant's litigation costs. A rational defendant may, therefore, elect to compromise rather than incur the expense of defending the proceedings, paying its own costs, and additionally reimbursing the unsuccessful claimant's litigation expenses. This would confer an unwarranted bargaining advantage upon unmeritorious claimants and encourage settlements driven by the fear of costs rather than the legal merits of the dispute. The principles relating to costs serves the opposite purpose: It encourages responsible litigation, discourages abuse of the judicial process, compensates the successful party for reasonable expenses incurred in

vindicating its rights, and ensures that litigation is determined on its merits. It is not intended to reward unsuccessful litigants or to underwrite claims that fail for want of proof. Any contrary approach would be inconsistent with the statutory scheme of SCPA 2014, distort the economics of litigation, and erode public confidence in the fair administration of justice.

Legality Of Penalties Imposed Under Section 33 For Alleged Violation Of Section 19 By Appellant Shop

21. The next question requiring determination in these Appeals is whether the Consumer Court lawfully imposed penalties under Section 33 of SCPA 2014 upon the Appellant Shop (Bin Safeer Supermarket), for the alleged violation of Section 19, and, if so, whether such penalties could nevertheless be sustained after the Consumer Court had dismissed the Complainant's substantive claim for damages on the ground that no consequential loss or damage had been proved.
22. Finding That Appellant Shop Is A "Manufacturer" Under Section 19: The Consumer Court having first held that Appellant Shop (Bin Safeer Supermarket) was a "manufacturer" within the meaning of Section 2(l) of SCPA 2014, it further held that the cash receipt issued to the Complainant Advocate did not contain the batch number of the product, the date of manufacture and the date of expiry required by Section 19(c) of SCPA 2014, and on that basis imposed a fine of Rs.25,000/- upon the Appellant Shop.
23. The finding that Appellant Shop was a "manufacturer" is plainly contrary to the statutory scheme. The definition of "manufacturer" under Section 2(l), though inclusive in nature, extends to a seller only in the limited circumstances specifically enumerated therein, namely where the seller exercises control over the design, construction or quality of the product causing damage, or where he deals with products of a foreign manufacturer under the conditions prescribed in clause (v). The Appellant Shop is merely a retailer selling packaged bread manufactured by local manufacturing companies. It neither manufactures the bread nor exercises any control over its manufacture, design or quality, nor does it satisfy any of the other conditions specified in Section 2(l). It therefore cannot be regarded as a "manufacturer" within the meaning of SCPA 2014.
24. Appellant Shop Carrying On "Trade" In Terms Of Section 2(r): That, however, does not mean that the Appellant Shop (Bin Safeer Supermarket) is absolved of the obligations imposed by SCPA 2014. The Appellant Shop (as well as the shop Bin Hashim Store – a pro forma Respondent No.2 in Misc. Appeal No.53/2019) are engaged in the conduct of a business providing goods to

consumers and are, therefore, carrying on “*trade*” within the meaning of Section 2(r) of SCPA 2014. They are accordingly a person to whom Section 19 applies inasmuch as that provision governs every manufacturer or trader selling goods. To that extent, the Consumer Court rightly held that Section 19 was applicable to the Appellant Shop. However, it erred in treating the Appellant Shop as a “*manufacturer*”. The Appellant Shop falls within the scope of Section 19 only in its capacity as a seller of goods carrying on “*trade*”.

25. Alleged Violation of Section 19 by Appellant Shop – Penalty Under Section 33 Applies Only To A “*Manufacturer*”: The foregoing, however, is not the only error committed by the Consumer Court. A more fundamental error lies in its assumption that a breach of Section 19 by a retailer attracts the penal consequences prescribed by Section 33 of SCPA 2014. Although Section 19 imposes an obligation upon every manufacturer or trader selling goods to issue a receipt containing the prescribed particulars, it does not itself create any penal consequence. The power to impose punishment is conferred by Section 33, which, by its express terms, applies only to a “*manufacturer*”. Section 33(1) expressly provides that “*Where a manufacturer fails to perform or in any way infringes the liabilities provided in Sections 4 to 8, 11, 13, 14, 16 and 18 to 22, he shall be*” liable to the punishments prescribed therein. The legislature has, therefore, consciously confined penal liability under Section 33(1) to manufacturers. Significantly, unlike Section 19, Section 33 makes no reference whatsoever to a trader, retailer or seller.
26. The distinction is both deliberate and significant. Where the legislature intended a substantive obligation to bind both manufacturers and traders, it expressly employed both expressions, as is evident from Section 19 itself. Conversely, while creating penal consequences under Section 33, the legislature advisedly confined the provision to manufacturers alone. It is a long-recognised principle that penal statutes must be construed strictly² and that a Court cannot enlarge, by implication or equitable construction, the class of persons made liable to punishment³. Had the legislature intended traders also to be punishable for contravention of Section 19, it would have expressly so provided. The omission cannot be supplied by judicial interpretation.

² PLD 1975 SC 506 (*Brig. (Retd.) F.B. Ali v. The State*); PLD 1984 SC 289 (*Siddique Khan v. Abdul Shakur Khan*); 1995 MLD 104 (*Faisal Asad v. Secretary Health, Government of Sindh*); 2003 YLR 749 (*Nisar Ahmed Khuro v. Election Tribunal-II*); 2005 SCMR 728 (*Chairman, Board of Intermediate and Secondary Education v. Rizwan Rashid*); 2014 SCMR 637 (*Tahir Hussain Mehmoodi v. Liaqat Ali*); PLD 2018 SC 52 (*State Bank of Pakistan v. Securities And Exchange Commission of Pakistan*); Unreported judgment of the Division Bench of Sindh High Court dated 26.2.2021 in CP No.D-2132/2019 (*Muhammad Khan v. Province of Sindh*)

³ PLD 1965 (WP) Kar 90 (*The State v. Abdul Rehman*)

27. Consequently, even assuming that the receipt issued by Appellant Shop did not fully comply with Section 19(c), such omission did not authorise the Consumer Court to impose a penalty under Section 33(1), since the Appellant is admittedly not a manufacturer. The fine imposed upon Appellant Shop (Bin Safeer Supermarket) was therefore without lawful authority and cannot be sustained in law.

Legality Of Penalties Imposed Under Section 33 For Alleged Violation Of Sections 4(2) And 11(1) By Appellant Bread Manufacturers

28. Appellant Bread Manufacturers: The position of the manufacturing companies – namely, Appellant *BAKE PARLOR* bread and Appellant Golden Harvest Foods (Pvt) Limited (manufacturers of *DAWN* bread) – stands on a different footing. Being manufacturers within the meaning of Section 2(l) of SCPA 2014, they undoubtedly fall within the ambit of Section 33. That, however, does not, by itself, justify the imposition of the penalty prescribed therein. Before fines could lawfully be imposed upon them for the alleged contravention of Sections 4(2) and 11(1) of SCPA 2014, the Consumer Court was first required to determine, that the statutory requirements of the said Sections stood satisfied and the manufacturers had, in fact, infringed the obligation imposed by them.
29. Finding That Appellant Bread Manufacturers Violated Section 4(2): Before examining this issue, it may first be clarified that the Impugned Order dated 11.5.2019 (forming the subject matter of Misc. Appeal Nos.27 and 32 of 2019), contains no finding of violation of Section 4(2) of the SCPA 2014 against the Appellant therein (the manufacturer of *BAKE PARLOR* bread), nor does it impose any fine for any such alleged violation.
30. By contrast, the Impugned Order dated 31.5.2019 (forming the subject matter of Misc. Appeal No.53/2019), records a finding that the Appellants therein (the manufacturers of *DAWN* and *BRADY'S* bread) violated Section 4(2) of the SCPA 2014 and, on that basis, imposed a fine upon them. The relevant portion of the Impugned Order dated 31.5.2019 reads as follows:

18. A part from above, no doubt the standard quality of both breads cannot be determined by this Court without test or analysis from lab, however in other sense the bread products of defendants # 2 & 3 [bread manufacturers] are defective within the meaning of clause-(c) of sub-section 2 of section 4 of Sindh Consumer Protection Act 2014 which provides that it is defective because as [no] adequate warning has been given as provided in section 7. Now the Section 7 of Sindh Consumer Protection Act 2014 is reproduced as under:

7. (1) A product shall be defective if an adequate warning about the product that it possessed a characteristic that could cause damage, has not been provided at the time the product left its manufacturer's control or the manufacturer has failed to use reasonable care to provide an adequate warning of such

characteristic' and its danger to users and handlers of the product:

19. It appears from bare reading of Section 7 that the product shall be defective if the adequate warning has not been given and the said product can cause damage, like in the case in hand neither DAWN bread nor BRADY'S bread have given adequate warning for it's use as such neither manufacturing nor expiry date or even batch number of product has been given on the shopper/wrapper, therefore shelf life of bread cannot be determined without express adequate warning, so that it can safely be said that both products are defective to the extent of non-providing adequate warning. Since the complainant has failed to establish any damage caused by product, no order of damages is recorded against any defendant and even the restriction is provided under section 10 of Sindh Consumer Protection Act, hence this point is answered as "DISCUSSED ACCORDINGLY".

31. The reasoning adopted by the Consumer Court for holding that the Appellant Bread Manufacturers had infringed Section 4(2)(c), read with Section 7 of SCPA 2014, is, with respect, legally unsustainable. Having expressly observed that the quality or standard of the bread products (namely DAWN and BRADY'S) could not be determined in the absence of any laboratory analysis or scientific examination, the Consumer Court nevertheless proceeded to hold the products "*defective*" solely on the ground that the wrappers did not disclose the manufacturing date, expiry date or batch number. This reasoning overlooks the plain language of Sections 4(2)(c) and 7. In so doing, the Consumer Court impermissibly equated the absence of certain labelling particulars with the absence of an "*adequate warning*" contemplated by Section 7, even though the two concepts are distinct and operate in different fields.
32. Section 7 is not concerned with every omission in labelling or packaging; rather, it contemplates the failure to provide an adequate warning regarding a dangerous characteristic of the product capable of causing damage to users or handlers. The legislative focus of Section 7 is, therefore, not upon the absence of general product information, but upon the failure to warn consumers of an inherent characteristic of the product which is capable of causing damage. The Consumer Court appears to have conflated a failure to provide product identification particulars with a failure to warn of a dangerous characteristic of the product, although the latter alone attracts Section 7 of SCPA 2014. The omission of the manufacturing date, expiry date or batch number, by itself, does not constitute the omission of a warning regarding a dangerous characteristic of the product within the meaning of Section 7. While such particulars may be required under some other statutory or regulatory regime, they cannot, by themselves, be elevated to the status of an "*adequate warning*" for the purposes of Section 7 of SCPA 2014. Moreover, the Consumer Court did not record any finding that the bread products possessed any dangerous characteristic or any characteristic capable of causing damage, which is the essential jurisdictional fact for attracting Section 7. More

fundamentally, the Consumer Court itself categorically found that the Complainant Advocate had failed to establish that any damage had been caused by the bread products. Having recorded such finding, it was internally contradictory to simultaneously invoke Sections 4(2)(c) and 7, both of which are predicated upon a product possessing a characteristic capable of causing damage and the manufacturer's failure to provide an adequate warning thereof. The impugned finding thus rests upon an erroneous construction of the statutory provisions and is irreconcilable with the Consumer Court's own findings of fact, rendering the conclusion legally unsustainable.

33. The imposition of penalty upon the Appellant Bread Manufacturers under Section 33 of SCPA 2014 for the alleged infringement of Section 4(2) is unsustainable for additional reasons also. Although Section 33(1) prescribes penal consequences where a manufacturer fails to perform or infringes the statutory liabilities provided in Sections 4 to 8 of SCPA 2014, the existence of such statutory liability must first be established in accordance with the statutory scheme before the penal jurisdiction of the Consumer Court can be validly invoked. Section 4(2), properly construed, does not create an independent statutory obligation or liability capable of separate infringement; rather, it is definitional in nature, specifying the limited circumstances in which a product may be regarded as “*defective*” for the purposes of the liability created by Section 4(1), read with Sections 5 to 8. Consequently, before any penalty could lawfully be imposed under Section 33, it was incumbent upon the Consumer Court to first record findings that the product was defective within the meaning of SCPA 2014 and that such defect had attracted the manufacturer's statutory liability under Section 4(1).
34. Having, however, dismissed both the Consumer Claims insofar as the claim for damages was concerned on the ground that no consequential loss or damage had been established, the Consumer Court effectively negated the statutory basis upon which such statutory liability rested. In the absence of an independently established liability under Section 4 capable of being infringed, the penal provisions of Section 33 could not lawfully be attracted. Any other construction would impermissibly enlarge the scope of a penal provision beyond its plain language, by treating a definitory provision as though it created an independent penal obligation, a course which is not sanctioned by established principles governing the interpretation of penal statutes. The impugned penalty imposed upon the Appellant Bread Manufacturers under Section 33 for the alleged violation of Section 4(2) is, therefore, without lawful authority and cannot be sustained.
35. Finding That Appellant Bread Manufacturers Violated Section 11(1): The imposition of penalty upon the Appellant Bread Manufacturers for the alleged

infringement of Section 11(1) is equally unsustainable. The Appellant Golden Harvest Foods (Pvt) Limited (the manufacturer of *DAWN* bread in Misc. Appeal No.53/2019) had specifically pleaded in paragraph 4 of its Written Statement that there was no obligation under SCPA 2014 requiring a manufacturer to print the date of manufacture or the date of expiry on bread wrappers. This defence went to the very root of the alleged contravention, for the existence of a legally enforceable duty was the indispensable foundation for attracting the penal consequences prescribed by Section 33. Before imposing any penalty, it was incumbent upon the Consumer Court to examine whether such duty existed under Section 11 itself or under any applicable statutory or regulatory framework governing the manufacture and sale of bread.

36. Moreover, Section 11(1) does not impose an unqualified duty of disclosure. The obligation arises only "*where the nature of the product is such that*" the disclosure of, inter alia, the date of manufacture or expiry "*is material to the decision of the consumer to enter into a contract for sale*". Before holding that Section 11(1) had been contravened, the Consumer Court was, therefore, required to determine that the statutory condition of materiality stood satisfied.
37. In the present case, there was no evidence whatsoever that the absence of the date of manufacture or expiry had any bearing upon the Complainant Advocate's decision to purchase the bread products. On the contrary, the fact that he proceeded to purchase the bread notwithstanding the alleged absence of such particulars was itself a relevant circumstance indicating that their disclosure was not material to his decision to enter into the contract of sale. The Consumer Court, however, neither considered this specific defence nor framed any point for determination on this aspect or returned any finding thereon. Nor did it determine whether, having regard to the nature of the product, disclosure of the date of manufacture or expiry was material within the meaning of Section 11(1), or whether the applicable statutory or regulatory framework or the prevailing industry practice required such particulars to be printed on bread wrappers at the relevant time.
38. This interpretation is reinforced by Section 11(2). While subsection (1) imposes a conditional duty of disclosure where, having regard to the nature of the product, such disclosure is material to the consumer's decision to enter into the contract for sale, subsection (2), by employing the non obstante expression "*Notwithstanding anything contained in sub-section (1)*", empowers the Government to require such disclosure by general or special order in particular cases. The enactment of subsection (2) further demonstrates that the legislature contemplated circumstances in which a specific and enforceable obligation of disclosure could be imposed by a

general or special order of the Government notwithstanding the provisions of subsection (1). Yet, the Consumer Court did not even examine whether any such general or special order existed at the relevant time. No inquiry was undertaken by the Consumer Court as to whether any such general or special order was in force at the relevant time requiring bread manufacturers to print the date of manufacture or the date of expiry on their products.

39. It may also be noted that, in Consumer Claim No.2/2019 (concerning *BAKE PARLOR*), the Complainant Advocate did not even allege that he had consumed the bread and, in his cross-examination, unequivocally admitted that he had not suffered any consequential damage. Likewise, in Consumer Claim No.3/2019 (concerning *DAWN* and *BRADY'S*), it was neither alleged nor established which of the two bread products had allegedly caused the illness. Both Consumer Claims were, in material respects, unsupported by objective medical, scientific, or other corroborative evidence, and the alleged defects in the bread products remained wholly unverified. In these circumstances, the manufacturing companies had every reason to believe that the Consumer Claims would fail in their entirety. They could not reasonably have anticipated that, notwithstanding the failure of the substantive claims, the Consumer Court would proceed to determine their alleged liability under Section 11(1) or impose a statutory penalty under Section 33. This is particularly so because the Consumer Court had not put the Appellant Bread Manufacturers on notice that it proposed to examine their alleged penal liability as a distinct and surviving issue.
40. The Consumer Court neither examined the prevailing legal position nor recorded any finding upon the defence raised by the Appellant Bread Manufacturers. Instead, it appears to have proceeded upon the assumption that the mere absence of the manufacturing and expiry dates from the bread wrapper was sufficient, by itself, to establish a violation of Section 11(1). Such approach overlooks the language of Section 11, ignores the surrounding regulatory framework, fails to address the statutory condition of materiality embodied in Section 11(1), fails to determine whether any legally enforceable duty of disclosure existed at the relevant time, and fails to appreciate that penal liability cannot be founded upon assumptions or perceived desirability of a commercial practice, but must rest upon a clear and existing legal obligation expressly imposed by law.
41. It is well settled that penal statutes must receive strict construction and that no person should be subjected to penal consequences unless the alleged contravention falls squarely within the language employed by the legislature⁴.

⁴ 1991 MLD 1486 (*Agencies Corporation v. The Central Board of Revenue*)

The existence of the relevant statutory duty is, therefore, a condition precedent to the imposition of penal liability. In the absence of any finding that, at the relevant time, the Appellant Bread Manufacturers were under a legally enforceable obligation to print the manufacturing and expiry dates upon bread wrappers, the essential foundation for imposing penalty under Section 33 remained unestablished.

Consumer Court's Directions Relating To Sindh Food Authority Act, 2016 – Subsequent Conviction And Imprisonment Of BRADY'S Proprietor

42. It may be noted that the manufacturer of *BRADY'S* bread has not preferred any appeal against the Impugned Order of 31.5.2019 (passed in Consumer Claim No.3/2019). Although the manufacturer is not before this Court as an appellant (having instead been impleaded as pro forma Respondent No.3 in Misc. Appeal No.53/2019), the findings and directions recorded by the Consumer Court in relation to *BRADY'S* form part of the Impugned Order 31.5.2019 and, to the extent relevant to the questions arising in these Appeals, also merit notice.
43. In the Impugned Order dated 31.5.2019, the Consumer Court observed that *BRADY'S* was not registered under the *Sindh Food Authority Act, 2016*, had not obtained a food business licence thereunder, and had not secured a Standard Quality Certificate. It accordingly directed *BRADY'S* to obtain the requisite registration and food business licence under the *Sindh Food Authority Act, 2016* and to apply for a Standard Quality Certificate from the *Pakistan Standards and Quality Control Authority* within ten (10) days. The Consumer Court further directed that, in the event of non-compliance, the Sindh Food Authority should seal the business premises of *BRADY'S*.
44. It is also material to note that, during the pendency of the proceedings, the witness produced by *BRADY'S* stated in his cross-examination, recorded on 20.4.2019, that, for approximately the preceding three months, the manufacturer had been printing the manufacturing and expiry dates on its bread products in accordance with the requirements of the *Sindh Food Authority*. This evidence finds no discussion in the Impugned Order. Nevertheless, the Consumer Court proceeded to impose a penalty of Rs.50,000/- upon *BRADY'S* under Sections 4(2) and 11(1) of SCPA 2014 without addressing that evidence or recording any reason for rejecting it.
45. Mr. Abdul Shakoor, learned Advocate, has further drawn this Court's attention to the fact that, pursuant to the Impugned Order dated 31.5.2019, the Consumer Court subsequently initiated proceedings alleging non-compliance with the directions contained therein. Those proceedings culminated in the

conviction of the owner/proprietor of BRADY'S, Sheikh Junaid Iqbal, by order dated 6.8.2019, whereby he was, inter alia, sentenced to undergo simple imprisonment for a term of one (1) year. Pursuant thereto, he remained incarcerated for a period of three (3) days. **Significantly, the show-cause notice dated 6.8.2019 – which was issued on the very day the conviction order was passed – expressly required him to submit his reply within one (1) hour of its service**, following which the conviction order was passed on the same day.

46. These facts stand recorded in the judgment dated 29.8.2019 (reported as 2020 MLD 1407 (Junaid Iqbal v. The State)), whereby another bench of this Court (in Criminal Appeal No.449/2019), set aside the conviction and sentence and acquitted Sheikh Junaid Iqbal. The Court, inter alia, observed that the Complainant Advocate had “*failed to prove its case*” and that **affording only one (1) hour to respond to the show-cause notice** was “*quite unjust and improper as well as against the principle of natural justice and in violation of Article 10A of the Constitution... ..*”. Paragraph 9 of the reported judgment reads as follows:

9. After going through the record, I have come to the conclusion that the complainant has failed to prove its' case against the appellant for the reasons that as per the version of complainant that he purchased two breads namely, Dawn Bread and Brady's Bread from Bin Hashim Store, and thereafter, he ate the same on dinner and at midnight, he felt some pain in his stomach and resultantly, started vomiting and whole night he could not sleep comfortably. **In order to prove this fact, no doctor report in this regard is available on record to ascertain whether actually the complainant was fallen ill on the said date because of eating of such breads. Nothing on record that when the appellant was fallen ill, then why he did not approach to any doctor for his treatment. No supporting evidence of the claim of the complainant is on record. Merely oral assertion of the complainant in this behalf is not enough to blame the appellant. It is an admitted fact that appellant is running his business for the last nine (9) years, but during this intervening period, no any purchaser has made any complaint against the appellant regarding selling of substandard quality breads, or any other items made in his food industry.** It also appears from the record that case and claim of the complainant has been denied by the appellant in his written statement and evidence. The appellant has been cross-examined by the complainant side, but no favorable answer in favour of the complainant comes on the record. **Despite all these facts, learned trial Court in his order dated 31.05.2019, issued certain directions to the appellant for compliance within thirty (30) days.** It is noted that according to the case papers, on 06.08.2019, case was fixed for compliance of aforesaid order, it appears that on the said date, appellant was appeared before the trial Court, but the trial Court has issued Show Cause Notice to the appellant for non-compliance and its **reply was ordered to submit within one hour, which is apparently quite unjust and improper as well as against the principle of natural justice and in violation of Article 10A of the Constitution** of Islamic Republic of Pakistan, 1973, which provides fair trial, but from the perusal of record, no opportunity of fair trial has been given by the trial Court to the appellant. **[Emphasis added]**

Conclusion

47. These Consumer Claims/Complaints should never have seen the light of day, let alone crossed the threshold of the Consumer Court. Built upon an evidentiary record that was wholly deficient, they lacked even the minimum legal and factual foundation necessary to sustain the proceedings or to justify the findings ultimately returned by the Consumer Court. In the Consumer Claim (No.2/2019) concerning *BAKE PARLOR*, the bread alleged to be mouldy was admittedly never even consumed. In the Consumer Claim (No.3/2019) concerning *DAWN* and *BRADY'S*, it was never established which of the two bread products allegedly consumed had caused the alleged illness. More significantly, no medical practitioner was ever consulted, no medical treatment was sought, and no medical evidence whatsoever was produced to substantiate the allegation that the Complainant Advocate had suffered any illness attributable to the consumption of either bread product. Equally, in none of the Consumer Claims were any photographs of the allegedly contaminated bread products taken or produced in evidence; none of the unconsumed bread products was produced before the Consumer Court; nor was any laboratory examination, scientific analysis, or expert evidence adduced to establish that any of the bread products was contaminated, defective, adulterated, or otherwise unfit for human consumption.
48. Yet, despite these glaring deficiencies, the proceedings culminated in the incarceration of the proprietor of one of the bread manufacturers – whose conviction was subsequently set aside by another bench of this Court – and, paradoxically, an award of Rs.110,000/- as litigation costs in favour of the very party (Complainant Advocate) whose claims had failed, in respect of three small plain bread loaves alleged to be mouldy and worth no more than Rs.44/- each at the relevant time.
49. For the foregoing reasons, these three Miscellaneous Appeals succeed and are accordingly **allowed with costs** of Rs.500,000/- (Rupees Five Hundred Thousand) in each Appeal, to be paid by the Respondent No.1 (Complainant Advocate) to the respective Appellants. The Impugned Orders dated 11.5.2019 and 31.5.2019 are hereby **set aside**. Consequently:
- i) The litigation costs of Rs.110,000/- paid to the Respondent No.1 (Complainant Advocate) pursuant to the Impugned Order dated 11.5.2019 (emanating from Consumer Claim No.2/2019) shall be returned by him to the Nazir of District East Karachi **within twenty (20) days** from the date of this Judgment, whereupon the Nazir shall, forthwith and in accordance with law, refund the same to the concerned Appellants. In the event of default, the outstanding amount

shall carry mark-up at the prevailing policy rate notified by the *State Bank of Pakistan* from time to time, computed from the date immediately following the expiry of the aforesaid twenty (20) days until the date of realization.

- ii) Any fine deposited by the Appellants pursuant to the Impugned Orders shall be refunded to the respective Appellants forthwith, but in any event ***not later than forty-five (45) days*** from the date of this Judgment, together with any profit, if accrued thereon, in accordance with law.

JUDGE