

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 81 of 2021

'TCS Private Limited. vs. Amna Khan'

Appellant : Through Syed Maqbool Hussain Shah,
Advocate along with Mr. Burhan Khan
Jakhrani, Advocate

Respondent : Through Mr. Raja Muhammad
Arsalan, Advocate

Date of Hearing : 20.08.2026
Date of Announcement : 28.08.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- By this judgement, I intend to dispose of this Miscellaneous Appeal filed by the Appellant [TCS Private Limited] under Section 34 of the Sindh Consumer Protection Act, 2014, against the Judgement dated 09.11.2021 passed by the learned Consumer Protection Court, Karachi (South) whereby Claim No. 16 of 2020 filed by the Respondent [Amna Khan] was allowed against the Appellant.

2. The record shows that the Respondent filed the underlying claim on 07.07.2020 through her attorney Mr. Hassan Panah, along with an application seeking condonation of delay in filing the same. The Appellant filed its counter affidavit to the said application and thereafter its written statement on 10.12.2020, denying liability and raising preliminary objections including that of limitation. The application for condonation of delay was allowed by the Trial Court through Order dated 01.10.2020. The Appellant assailed the said order before this Court in Constitutional Petition No. D-5637 of 2020, which petition came to be disposed of on 09.11.2021. During the pendency of the claim, the Respondent led her evidence through her attorney Mr. Hassan Panah, whose examination-in-chief was recorded on 28.01.2021 and who was cross-examined by the Appellant's counsel thereafter. The Appellant in turn led its evidence through its authorised representative Mr. Umair Hassan, whose examination-in-chief and cross-examination both took place on 18.09.2021. After hearing the arguments of both sides, the Trial Court proceeded to pass the impugned judgement dated 09.11.2021, aggrieved by which the Appellant has preferred the present appeal.

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3. The background facts giving rise to the underlying claim are that the Respondent booked a house moving shipment with the Appellant for transportation of household goods from Rawalpindi to Karachi against TCS Receipt No. 2627184 dated 02.01.2020, the items being valued by her at approximately Rs.3,831,000/-. The case set up by the Respondent was that the Appellant had assured her that its own vehicle and container would be used for the shipment, but had in fact deceptively outsourced the transportation to a third-party carrier by the name of Pir Madar Goods Transporters, who used a substandard vehicle for the said purpose. It was further her case that on 03.01.2020 she was informed that the vehicle carrying her shipment had caught fire, as a result of which the entire consignment was destroyed. On this basis the respondent claimed that the appellant had rendered faulty and deficient services within the meaning of Section 13 of the Sindh Consumer Protection Act, 2014, and had also indulged in false and misleading representations in breach of Section 21 of the said Act, and she accordingly sought refund of the amount paid, damages, compensation and costs. The Appellant denied the claim in its entirety and took up several defences before the Trial Court, including that the claim was time barred, that the respondent was not a consumer within the meaning of the Act since the booking receipt had been signed by her husband and not by her, and that the power of attorney relied upon by the Respondent's attorney was forged. The Trial Court, after recording evidence of both sides, held in favour of the Respondent and directed the Appellant to refund the receipt amount of Rs. 76,000/-, to pay Rs. 1,500,000/- as damages for infringement of liability under Section 13, to improve its services, and to pay a fine of Rs 20,000/-, which findings and directions are now under challenge in the present appeal.

4. The learned counsel for the Appellant explained that the Respondent on 02.01.2020 booked a consignment with the Appellant for transport from Rawalpindi to Karachi in a container allegedly containing household goods and personal items worth Rs.3,831,000/-, however, on 06.01.2020 the container caught fire enroute; the Respondent filed an FIR No. 09/2020 dated 07.01.2020 under Sections 435, 407, 427 PPC at P.S Boat Basin, Karachi. He emphasised that lodging of the FIR establishes that date of knowledge of the Respondent was 07.01.2020 yet the Respondent filed the complaint in the Consumer Protection Court under the Sindh Consumer Protection Act, 2014 in July 2020, whereas the limitation period under the said Act for filing of the complaint is 30 days from arising of cause of action. He submitted that the Respondent filed a condonation application by claiming that she could



not file a complaint within limitation period on account of Covid-19. By way of order dated 01.10.2020, the Respondent's condonation application was allowed by the learned Consumer Protection Court. He further explained that since there is no remedy of appeal against such order in the Sindh Consumer Protection Act, 2014, the Appellant was compelled to file C.P No. D-5637/2020, which was decided vide Order dated 09.11.2021 by observing that till pendency of the said petition, Trial Court had already concluded the trial and hearing of arguments hence it is observed that in the wake of such development, it was not appropriate to pass any order which may prejudice the case. The learned counsel submitted that the matter was fixed for announcement of judgment before the Trial Court on the same date as dismissal order passed by this Court in the constitutional petition. He therefore submitted that question of limitation is still open in this appeal for the Court to decide. He argued that there was no case of Covid-19 in Pakistan on the date of accrual of the alleged cause of action and hence the complaint was not liable to be condoned. He drew the Court's attention to the cross-examination of attorney of the Respondent whereby it was admitted that 73 days had already been passed from the date of lodging of FIR till issuance of Covid-19 notification of this Court on 22.03.2020. He lastly submitted that the Appellant has already been acquitted in respect of the criminal prosecution instituted by the Respondent. He relied upon the cases of *Muhammad Anwar (deceased) through L.Rs and others vs. Essa and others*, PLD 2022 SC 716 and *M/s Pak Suzuki Motors Company Limited through Manager vs. Faisal Jameel Butt and another*, PLD 2023 SC 482.

5. On the other hand, the learned counsel for the Respondent drew the Court's attention to challan dated 18.02.2020, which records that during the investigation it was discovered that the driver of the vehicle had some welding work done at an unknown location due to which cargo loaded in the vehicle was burnt. He submitted that upon such information it was learnt that although the Appellant's marketing stance is that they use their own vehicle for transportation of all house moving services, the vehicle/truck bearing No. JV-4304 which was used for transportation of the Respondent's shipment, was not owned by the Appellant and it was in fact owned by a company named Pir Madar Goods Transportation Company, which was a sheer violation of Section 21 of the Sindh Consumer Protection Act, 2014 as well as provisions Contract Act, 1872. He further argued that relevant knowledge for the purposes of complaint under the Sindh Consumer Protection Act, 2014 was gained on 18.02.2020 during which time Covid-19 notification was

in effect. He argued that the Respondent booked a 16 feet container but the container used for shipment was 20 feet long which was the cause of damage. He submitted that since the Respondent's condonation application was allowed and constitutional petition filed against such order by the Appellant was dismissed and not disposed of as incorrectly mentioned in the memo of appeal by the Appellant, this ground is not available to the Appellant. He relied upon the case of *M/s Deltex Courier Service vs. Sajid Imran Gill and others*, 2019 CLC 1041.

6. In rebuttal, the learned counsel for the Appellant argued that first Covid-19 notification was issued by this Court on 22.03.2020 thereafter on 28.03.2020 and 15.04.2020.

7. Heard the learned counsels for the parties and perused the entire record with their able assistance.

8. According to the condonation application filed by the Respondent before the Consumer Protection Court as a result of in-depth examination by the Respondent/Complainant, it appeared in the month of March 2020 that vehicle/truck bearing No. JV-4304, which was transporting the Respondent's shipment was not owned and maintained by the Appellant and was unlawfully outsourced to a third party, which is in violation of the Sindh Consumer Protection Act, 2014 and relied upon circulars dated 22.03.2020, 28.03.2020 and 15.04.2020 issued by this Court regarding suspension of civil court work in District Judiciary as reasons for her inability to proceed with the matter before the Consumer Court in a timely manner. It may be seen that no specific date of knowledge in the month of March has been given. Similarly, no explanation or details of what was entailed in the in-depth examination that was allegedly undertaken by the Respondent whereby the alleged discovery was made is given in such condonation application.

9. On the contrary, counsel for the Respondent argued before this Court that such knowledge was acquired on the basis of the challan submitted on 18.02.2020 whereby it was revealed that the Appellant outsourced the transportation services.

10. Whereas, complaint filed by the Respondent in the Consumer Protection Court categorically states that upon thorough examination by the Respondent it appeared that truck bearing No. JV-4304, which was transporting the shipment was not owned and maintained by the Appellant and later it appeared that the Appellant had unlawfully and deceptively

outsourced the transportation of the Complainant's shipment to a third-party transportation Company constituting not only violation of Section 21 of the Sindh Consumer Protection Act, 2014 but also an utter violation of the Contract Act, where after FIR was lodged thereby indicating that the necessary knowledge of the alleged violations had already been obtained by the Respondent prior to the lodging of the FIR which was on 07-01-2020.

11. The averments made by the Respondent in the condonation application about timing of knowledge about the third-party outsourcing is in contradiction to her averments made in the complaint. Both such averments are in contradiction to the submissions of the learned counsel for the Respondent before this Court. The arguments of the learned counsel are not only not borne from the record but even otherwise there was no Covid-19 notification on 18.02.2020. In fact, the first case of Covid-19 in Pakistan was detected on 26.02.2020. At best no specific date of knowledge has been given in the condonation application and only month of March 2020 has been given, which being in contradiction of the contents of the plaint does not inspire confidence.

12. The learned Consumer Protection Court in its Order dated 01.10.2020 allowing the condonation application of the Respondent observed that the Consumer Protection Court may condone the delay if sufficient cause is shown. The learned Consumer Protection Court concluded that *prima facie* facts of the case show that the Respondent came to know about outsourcing of the shipment after completion of investigation in FIR No. 09/2020, which may be 19.02.2020 when challan was submitted before the learned Judicial Magistrate.

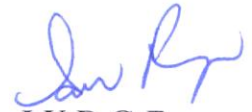
13. It is important to note that this was the *prima facie* observation which therefore indicates that the learned Consumer Protection Court had deferred the matter of final decision of limitation till further recording of evidence. The order further observes that limitation is a mixed question of law and fact which may be adjudicated after citing proper evidence which too indicates that question of limitation was to be argued at the time of final adjudication of the matter. On the contrary, instead of evaluating the evidence produced in respect of limitation the learned Consumer Protection Court in the impugned judgment has simply observed that condonation application of the Respondent was allowed and delay condoned.



14. But even otherwise the learned Consumer Court misread the evidence while concluding that Respondent came to know about outsourcing of the shipment after completion of investigation in FIR No. 09/2020, which may be 19.02.2020 when challan was submitted before the learned Judicial Magistrate as it is contrary to the record. As observed hereinabove the contents of the plaint filed by the Respondent show that she already had such knowledge prior to filing of the FIR but even otherwise if the date relied upon by the Consumer Protection Court is taken into consideration i.e. 19.02.2020, the learned Consumer Protection Court has obviously erred in relying upon the circulars issued by this Court suspending the judicial work except urgent and bail matters from 24.03.2020 onwards as 30 days from 19.02.2020 expired on 20.03.2020 as the year 2020 was a leap year, whereas circulars for suspension of work were not issued till 22.02.2020 hence cannot be viewed as sufficient cause for the delay in filing of the complaint before the learned Consumer Protection Court.

15. The finding that there was a chaotic situation in Pakistan in the month of March 2020 is unsubstantiated as lockdown was not imposed till 09.05.2020 and Pakistan closed its airspace on 22.03.2020. While the learned Consumer Protection Court was correct in observing that time period can be extended for sufficient cause, however, it cannot be extended for any cause that occurs after lapse of initial limitation period. If there was no sufficient cause of delay during the 30 days from arising of cause of action, time cannot be extended. From the plaint, it appears that the Respondent had knowledge of outsourcing prior to the filing of FIR on 07.01.2020, in which case the limitation under Section 29(4) of the Sindh Consumer Protection Act, 2014 stood expired on 06.02.2020. Even for arguments sake if it is taken to be the date of submission of challan i.e. 18.02.2020 or 19.02.2020 as argued the limitation stood expired on 19.03.2020 or 20.03.2020. As noted above, no specific date in the month of March, 2020 has been given by the Respondent of the alleged date of knowledge of the arising of the cause of action nor any explanation how such knowledge was gained and even otherwise no date or explanation contrary to the plaint can be accepted. In such circumstances, the Respondent failed to make out a case meriting condonation of delay and as such the learned Consumer Court erred in allowing the Respondent's condonation application and by failing to adjudicate the point of limitation after recording evidence in the impugned judgment.

16. In view of the foregoing, this appeal is allowed and the impugned judgment dated 09.11.2021 is set aside while the complaint of the Respondent is dismissed as time barred.


JUDGE

Imran