

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C. P. No. D-2314 of 2021

Danish Azhar Versus The Consumer Protection Court
(South), Karachi and other.

Priority

1. For hearing of CMA No.9936/2021.
2. For hearing of main case

ORDER

14.02.2022

Ms. Faiza Shah, Advocate for the petitioner.
Mr. Zulfiqar Ali Qureshi, Advocate for Respondent No.2.
Mr. Muhammad Rafiq Rajori, Additional AG Sindh.

Through these proceedings, Petitioner, inter-alia, seeks rejection of Complaint/Claim No.05 of 2021 filed against him by the Respondent No.2, Waheed Anwar Abro, under Section 26 of the Sindh Consumer Protection Act, 2014 (the “Act”) before the Consumer Protection Court Karachi (South). Earlier, the Petitioner filed an application in terms of Order VII Rule 11 read with Section 151 CPC for rejection of the Claim but the same was declined by the trial Court vide impugned order dated 11.03.2021.

2. From the pleadings it appears that the Petitioner is the proprietor of M/s Pets City, involved in the business of General Order Supplies/Services/Pet Animals. On 05.12.2021 he sold a male Shih Tzu dog purported to be of pure breed for a consideration of Rs.80,000.00 through invoice No.394, to the Respondent No.2, who later allegedly came to know that the animal was not of pure breed but of mixed one, rather of inferior quality. The Respondent No.2 approached the Petitioner for refund of the amount paid for a pure breed dog but latter did not pay any heed. Ultimately, Respondent No.2 filed the Complaint/Claim No.5 of 2021 seeking decree in the sum of Rs.200,000.00 against the Petitioner for cost and damages.

3. At the very outset, learned counsel for the Petitioner urged with vehemence that to confer jurisdiction upon the Consumer Court established under the Act, there must be a “consumer” while per definition of “consumer” as provided in Section 2(e) consumer means a person or entity who buys or obtain on lease any product for a consideration. She emphasized that the word “product”

used in the definition clause is further outlined under Section 2 subsection (n), but does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants.

4. Conversely, learned counsel for the Respondent No.2 while supporting the impugned order submitted that the Petitioner is also a service provider and provided certain services to him. He further submitted that under the garb of the dog of pure breed and kind, the Petitioner sold out a dog of inferior quality. He lastly submitted that the Respondent No.2 served a notice seeking refund of the paid amount with compensation but the Petitioner did respond the same. Hence, the trial Court has rightly rejected the Application filed by the Petitioner seeking rejection of the Claim.

5. Exercising her right of reply, Counsel for the Petitioner submitted that the Petitioner did not provide any services and only sold a dog for consideration of Rs.80,000.00 to the Respondent No.2, hence, the Claim was liable to be rejected. She pointed out that the contents of the Claim, prima facie, did not reflect that the Petitioner provided any services to the Respondent No.2. In support, she has referred to paragraph No.3 of the complaint, which merely starts as under:-

“3. That on 05th December, 2020, the Complainant was sold a male Shih Tzu dog purported to be of pure breed by the Respondent for a consideration of Rs.80,000/- paid against Invoice # 394 dated 05.01.2021.”

6. We have heard the learned counsel for the Petitioner, Respondent No.2 and perused the material available on record. The submission of the learned counsel for the Petitioner that the trial Court has no jurisdiction in the matter as the Respondent No.2 had purchased a dog from him and animals are specifically excluded from the definition of word product purchased by a customer. For ready reference, definition of word “Product” as provided in the Act is reproduced hereunder:-

“Product” has the same meaning as assigned to the word “goods” in the Sale of Goods Act, 1930, and includes products which have been subsequently incorporated into another product or an immovable but does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants.” (emphasis added)

7. A bare perusal of the preamble of the Act stipulates that it was enacted to provide protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith. However, upon conjunctive perusal of the definitions of words “consumer” and “product” for the purposes of instant case, it is evident that the Respondent No.2

does not fall within the definition of consumer as he purchased an animal from the Petitioner and animals are excluded from the definition of word “Product.” Accordingly, the Claim of the Respondent No.2 pending before the Consumer Court is also liable to be discarded on this score as well.

8. The counter submission of the learned counsel for the Respondent No.2 that the Petitioner has provided services to him is also misconceived and beyond the pleadings as a perusal of the Claim preferred by the Respondent No.2 as well as the prior legal notice sent on his behalf to the Petitioner shows that on 05th December, 2020, the Petitioner sold a male Shih Tzu dog to the Respondent No.2 purporting it to be of pure breed for a consideration of the Rs.80,000.00. The Respondent No.2 neither in the pending Claim nor in the legal notice has claimed that the Petitioner is a service provider and liable for faulty or defective service. Even otherwise, it is settled principle of law that no evidence beyond the pleadings is permissible and even if it has been led by a party, the Court shall exclude or ignore the same from consideration. Hence, submission of the learned counsel for the Petitioner that the Claim is liable to be rejected on this score as well carries force.

9. For the foregoing reasons, we by our short order allowed the Petition and quashed the proceedings culminating from Complaint/Claim No.05 of 2021.

Chief Justice

Judge