

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI  
**M. A. No. 53 of 2023**

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Dated: Order with signature of Judge(s)

For hearing of Main Case.

Date of hearing : 11<sup>th</sup> May, 2023.

Appellant : Muhammad Naeem Ikram through  
Syed M. Abid Qadri, Advocate.

Respondents : Sh. Tahir Rauf & Others.

**ORDER**

**Mohammad Abdur Rahman, J.** The Appellant has maintained this appeal under Section 34 of the Sindh Consumer Protection Act, 2014, against two orders dated 8 March 2023 and 3 April 2023 each passed in Claim No. 19 of 2022 by the Court of Consumer Protection Karachi (South).

2. The Claimant pleads that he had on 19 June 2021 entered into a contract with the Respondent No.1 and the Respondent No.2 for the purchase of a wooden bed set to be made in "Sheesham wood" for a total sale consideration of Rs. 70,000/- (Rupees Seventy Thousand Only) and against which partial payment of Rs.30,000/- (Rupees Thirty Thousand Only) had been paid by him. The items included in the bed set that were being purchased by the Claimant were:

- (a) double bed of 72x78";
- (b) two side tables along with drawer with glass top;
- (c) one singhar table along with mirror with glass top, and
- (d) one stool with foam along with singhar table.

3. The Claimant further contends that against the payment of the balance sale consideration he received delivery of these goods in September 2021 and thereafter he discovered that the furniture items were:

- (i) not made of Sheesham wood as he had contracted for, and
- (ii) were also not new and were in fact what he described as “used reconditioned furniture”.

The Claimant attempted to resolve this matter amicably with the Respondents No.1 and 2 but when such discussion were not successful, it caused him to send a legal notice dated 4 March 2022 to the Respondent No. 2. As no settlement was still forthcoming he instituted Claim No. 19 of 2022 under Section 26 of the Sindh Consumer Protection Act, 2014 before the Consumer Court seeking the following relief from that court:

- “
1. To direct the defendants to pay the amount of Rs.70000/- (Seventy Thousands) to the claimant along with 30% profit.
  2. To direct the defendants to pay immediately an amount of Rs.1000000/- (One Million) as damages in lieu of caused losses to the claimant.
  3. Cost and Any other relief, which this Hon’ble Court deem fit and proper under the prevalent circumstances of the case be awarded.”

4. The Claim maintained by the Appellant was heard by the Consumer Protection Court Karachi (South). Notices were served on the Respondent No.1 and Respondent No.2 and who despite being served failed to appear and who were thereafter debarred from filing their written statement causing the claim proceeded ex parte as against them. The claimant thereafter adduced his evidence “ex parte proof” and on the basis of which evidence the Consumer Court was pleased to decree the Claim and issued an order to the Respondents No.1 and Respondent No.2 directing them to take the following actions jointly within one month:

- “
1. To pay Rs.70000/- (Seventy Thousand Rupees Only) to the claimant and take back the sold furniture from the claimant or change the furniture.
  2. To pay fine of Rs.5000/- jointly in treasury account of Provincial Government. In case of default of fine, they shall suffer S.I. for thirty days.”

5. The Appellant was unhappy, or at the least not content, with the decision passed by the Consumer Protection Court as his claim for mark up had been denied *in toto* while on his claim for damages of Rs. 1,000,000 the Consumer Court had only awarded damages of Rs. 5,000. However, instead of preferring an appeal under Section 34 of the Sindh Consumer Protection Act, 2014, he elected to file an application before the Consumer Court, to recall the order dated 8 March 2023 citing the following basis for maintaining that Application:

“ For the facts disclosed by me/the deponent in accompanying affidavit it is prays that this Honorable Court may graciously be pleased to Revisit/Recall of its Order Dated 08.03.2023.

That the said order having some typographical errors and the sense thereof couldn't convey as its natural sprits, and this regard the claimant may kindly be facilitated by providing an opportunity to elaborate the case.

It is, therefore, requested that instant application may kindly be allowed in the interest of justice, equity and good consciences.”

6. The application was heard on 3 April 2023 where the Consumer Court, while dismissing the application, was pleased to hold that:

- (i) he had not made any typographical error in the order dated 8 March 3023, and
- (ii) that the Sindh Consumer Protection Act, 2014, does not confer on him the right to review his earlier order and on this basis the application filed by the claimant was not maintainable.

7. The Appellant has preferred this Appeal under Section 34 of the Sindh Consumer Protection Act, 2014 against both the Order dated 8 March 2023 and the Order dated 3 April 2023, and which Appeal was admittedly presented on **29 April 2023**. For the sake of clarity, and which is necessary to state keeping in mind the arguments that were raised by the Appellant, the same is also evident from the first paragraph of the appeal where it is stated:

“ Being aggrieved and dissatisfied of the Ex parte Order dated 08.03.2023 & 03.04.2023, passed by the learned Judge of Consumer

Protection Court/ C.J.J.M, At Karachi, South, the appellant above named preferred the instant appeal for kind consideration and appropriate Orders please.”

However in the prayer clause it would seem from Prayer Clause (b) which is the only prayer clause pleaded for setting aside an order of the Consumer Court, that the Appeal maintained only impugns the order dated 8 March 2023 as reproduced below:

“ ... (b) to pass an order thereby set aside the Orders dated 08.03.2023 and otherwise remand back it to the trial Court for Fresh Order.”

8. The provisions of Section 34 of the Sindh Consumer Protection Act, 2014 under which this Appeal has been filed states that:

“ 34. Any person aggrieved by any *final order* of the Consumer Court may file an appeal in the Sindh High Court within 30 days of such order.”

(Emphasis added is mine)

Keeping in mind that the Appeal had been presented on 29 April 2023, and which, in so far as the order dated 8 March 2023 was concerned, was 22 days after the period within which an appeal could have been preferred by the Appellant under Section 34 of the Sindh Consumer Protection Act, 2014, I confronted the Counsel of the Appellant to satisfy the court as to his submissions as to the maintainability of the Appeal against the order dated 8 March 2023. In response to the query the Counsel for the Appellant advanced the proposition that the order passed on 3 April 2023 had in fact merged into the order dated 8 March 2023 and hence the time period for the purpose of Section 34 of the Sindh Consumer Protection Act, 2014 for challenging the order dated 8 March 2023 should be calculated from 3 April 2023.

**A. The Sindh Consumer Protection Act, 2014**

9. The Sindh Consumer Protection Act, 2015 is described in its preamble as having been promulgated to:

“ to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith.”

10. Under sub-section (1) of Section 4 of the Sindh Consumer Protection Act, 2014 a “manufacturer” of a product as defined in the Sindh Consumer Protection Act, 2014 would be liable to a consumer for damages where a “characteristic” of a product that is manufactured by the manufacturer is found to be “defective” and which product when used by a consumer in a manner which a “reasonable person” would anticipate the product to be used, on account of such defect, causes “damage” to the consumer. Sub-Section (2) of Section 4 of the Sindh Consumer Protection Act, 2014 in clauses (a) to (d) specifies the four categories under which a product can be considered as “defective”; each of which are respectively defined in Section 5 to 8 of the Sindh Consumer Protection Act, 2014.

11. It is apparent that Claim No. 19 of 2022 was maintained by the Appellant was on the grounds that the items of furniture i.e. the Products were defective as not being “new” and not being made of “Sheesham” wood, they were defective in terms of Section 5 of the Sindh Consumer Protection Act, 2014 and on account of which the Appellant suffered “damage”. I am clear that the claim was therefore maintainable before the Consumer Court under Section 26 of the Sindh Consumer Protection Act, 2014 and hence that Court has passed the Judgment dated 8 March 2013 within its jurisdiction.

12. Section 34 of the Sindh Consumer Protection Act, 2014 stipulates that an appeal should preferred from the “Final Order” of the Consumer Court. The Provisions of Section 35 of the Sindh Consumer Protection Act, 2014 further clarify:

- “ 35. Every order of the Consumer Court, if no appeal has been preferred against such order under the provision of this Act, shall become final.”

(Emphasis added is mine)

The expression “Final Decision”, which to my mind for the purposes of Section 34 of the Sindh Consumer Protection Act, 2014 is synonymous with the expression “Final Order” as used in that Section, has received much attention in the courts of Pakistan<sup>1</sup> and in courts of other common law jurisdictions.<sup>2</sup> The Supreme Court of Pakistan in its decision reported as **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs. Abdul Wali Khan MNA Former President of Defunct national Awami Party**<sup>3</sup> has while interpreting the word final decision clarified that<sup>4</sup>:

- “ ... Therefore, a 'final decision' is a decision "which leaves nothing open to further dispute and which sets at rest the causes of action between the parties from which no appeal or writ of error can be taken"

A similar definition was given to the expression by Justice Rustam S. Sidhwa in **Muabarik Ali vs Fazal Muhammad**<sup>5</sup> wherein it was clarified that:<sup>6</sup>

- “ ... The word "final" can mean the last in series of judgments, decrees or orders which may have been passed. It can also mean that which is no longer further alterable and which has acquired finality. It is in the latter sense that the word “final” appears to have been used in section 12(2). A decision can only be treated as final if it is unalterable, except by any of the means provided by the Code of Civil Procedure or by any special procedure applicable to the given case. Thus, a final judgment, decree or order would mean a judgment, decree or order, so far as the Court rendering it is concerned, is unalterable, if it is not sought

<sup>1</sup> See **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct National Awami Party** PLD 1976 SC 57 and **Muabarik Ali vs. Fazal Muhammad** PLD 1995 SC 564

<sup>2</sup> See **Jethanand and Sons vs. The State of Uttar Pradesh** AIR 1961 SC 794; **Tarapore & Co. vs V/O Tractors Export, Moscow and others** AIR 1970 SC 1168; **Mammu vs Hari Mohan** AIR 2000 SC 650; **Salaman vs. Warner** 1891 1 QBD 734; **In Re: Herbert Reeves & Co** 1901 Ch D. 29; **Bozson vs. Altringham Urban District Council** 1903 KBD 547

<sup>3</sup> **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct national Awami Party** PLD 1976 SC 57 and **Muabarik Ali vs. Fazal Muhammad** PLD 1995 SC 564

<sup>4</sup> **Islamic Republic of Pakistan through Secretary Ministry of Interior and Kashmir Affairs Islamabad vs Abdul Wali Khan MNA Former President of Defunct national Awami Party** PLD 1976 SC 57 at pg. 105

<sup>5</sup> PLD 1995 SC 564

<sup>6</sup> *Ibid* at pg. 567

to be modified, reversed or amended by preferring an appeal, revision or review application”

Finally, a test to determine finality of a Judgment or Order that found the approval of Lord Alverstone CJ in the Court of Appeal of England in **Bozson vs. Altrincham Urban Council**<sup>7</sup> can also be considered:<sup>8</sup>

“ ... It seems to me that real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does then I think it ought to be treated as a final order; but if it does not, it is then in my opinion an interlocutory order”

13. Applying the test as indicated in the **Bozson vs. Altrincham Urban Council**,<sup>9</sup> to the powers conferred under Section 32 of the Sindh Consumer Protection Act, 2014 on the Consumer Court to issue an “Order” in terms of sub-section (a) to (k) of Section 32 of the Sindh Consumer Protection Act, 2014 **or** to an order of the Consumer Court to impose a penalty as prescribed in sub-section (1) and Sub-section (2) of Section 33 of the Sindh Consumer Protection Act, 2014; an appeal against any of the orders passed under those sections could be preferred under Section 34 of the Sindh Consumer Protection Act, 2014 from the “final order” passed thereunder i.e. an order that “finally dispose of the rights of the parties”.

#### **A. The Order Dated 8 March 2023**

14. I am clear that the Order dated 8 March 2023 was an order which finally disposed of the rights claimed by the Appellant in Claim No. 19 of 2022 and against which an appeal could have been maintained by him under Section 34 of the Sindh Consumer Protection Act, 2014 within 30 days i.e. on or before 7 April 2023. Admittedly, the Appellant had applied for **and** obtained the certified copy of the Order dated 8 March 2023 **all on**

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<sup>7</sup> 1903 KBD 547

<sup>8</sup> *Ibid* at 548

<sup>9</sup> 1903 KBD 547

15 April 2023 **and by which date the Appeal was already barred for presentation by a period of 8 days.**

15. As a specific period of limitation has been prescribed in Section 34 of the Sind Consumer Protection Act, 2014 I have also considered the application of the Limitation Act, 1908 to proceedings under the Sindh Consumer Protection Act, 1908. Sub-section (2) of Section 29 of the Limitation Act, 1908 prescribes that:

- “ (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law
- (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
- (b) the remaining provisions of this Act shall not apply.”

The provisions of this Section have been interpreted by the Supreme Court of Pakistan in **Ali Muhammad and another vs. Fazal Hussain and others**<sup>10</sup> where while considering whether the provisions of Section 5 of the Limitation Act, 1908 were attracted to condone a delay in filing an appeal under sub-section (4) of Section 15 of the West Pakistan Urban Rent Restriction Ordinance, 1959 Mr. Justice Nasim Hasan Shah (as his Lordship then was) held that:<sup>11</sup>

- “ ... The time allowed for an appeal under subsection (4) of section 15 to the High Court, under the Ordinance, is 30 days, whereas under Article 156 of the Limitation Act it is 90 days. The time allowed for filing the appeal by the special law i.e., West Pakistan Urban Rent Restriction Ordinance, 1959 being different from that given in the Limitation Act, Section 5 stands excluded by virtue of section 29(2) of the Limitation Act, which permits the application of only, sections 4, 9 to 18 and 22 in such situations. The same view has also been taken by us in Abdul Ghaffar and others v. Mst. Mumtaz (PLD1982 SC 88). The High Court, therefore, rightly dismissed the applications for condonation of delay invoking the provisions of section 5 of the Limitation Act.”

<sup>10</sup> 1983 SCMR 1239

<sup>11</sup> *Ibid* at pg. 1240



The Sindh Consumer Protection Act, 2014 is a “special” law and is also a “local” law dealing with issues pertaining to consumer protection in the province of Sindh. Section 34 of the Sindh Consumer Protection Act, 2014 having provided for a specific period of 30 days to prefer an appeal would by virtue of the provisions of sub-section (2) of Section 29 of the Limitation Act, 1908 exclude the provisions of Section 5 of the Limitation Act, 1908 from being applicable to such proceedings and as such no room is available to the Appellant to ask for condonation of delay under that Section. It seems that being aware of this fact, the Appellant has attempted to raise a novel argument that the order passed by the Consumer Court on 3 April 2023 in fact “merged” into the Order dated 8 March 2023 and hence the time period should be calculated from that date.

16. I have already held that the order dated 8 March 2023 was a final order to that extent the Appeal is clearly barred by a period of 22 days when it was filed on 29 April 2023 and was not maintainable. The provisions of Section 35 of the Sindh Consumer Protection Act, 2014 are fully attracted to that order and which had, as no appeal had been preferred by 7 April 2023, in accordance with the provisions of that section attained finality.

**B. The Order Dated 3 April 2023**

17. This order dated 3 April 2023 deals with an application filled by the Appellant before the Consumer Court and which reads as under:

“ For the facts disclosed by me/the deponent in accompanying affidavit it is prays that this Honorable Court may graciously be pleased to Revisit/Recall of its Order Dated 08.03.2023.

That the said order having some typographical errors and the sense thereof couldn't convey as its natural sprits, and this regard the claimant may kindly be facilitated by providing an opportunity to elaborate the case.

It is, therefore, requested that instant application may kindly be allowed in the interest of justice, equity and good consciences.”

The Application and more importantly the arguments that were addressed on it by the Appellant before the Consumer Court i.e. to award mark up that had not been granted and to enhance the damages payable to the Appellant to my mind clearly amounts to the Appellant asking the Consumer Court to review its Order dated 8 March 2023.

18. The procedure to be adopted by a Consumer Court is clarified in Section 31 of the Sindh Consumer Protection Act, 2014 as follows:

- “ 31. ...
- (3) ***For the purposes of this section***, the Consumer Court shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, ***in respect of the following matters***, namely:-
- (a) the summoning and enforcing attendance of any defendant or witness and examining him on oath;
  - (b) the discovery and production of any material object which may be produced as evidence.
  - (c) the receiving of evidence or affidavits;
  - (d) issuing of any commission for the examination of any matter; or
  - (e) any other matter which may be prescribed;”

As can be seen the powers contained in provisions of the Code of Civil Procedure, 1908 have been conferred on the Consumer Court under Sub-section (3) of Section 31 of the Sindh Consumer Protection Act, 2014 **for the limited purposes as indicated in clauses (a) to (e) of sub-section (3) of Section 31 of the Sindh Consumer Protection Act, 2014 as to applied to the processes as stipulated in Sub-Section (1) and Sub-Section (2) of Section 31 of the Sindh Consumer Protection Act, 2014.** I accept that where the applicability of the provisions of the Code of Civil Procedure, 1908 have either been excluded or curtailed by statute, nevertheless the “equitable” principles contained in the Code of Civil

Procedure, 1908 would continue to apply<sup>12</sup> but I am clear that this principle cannot be extended to include the right of review. It is now well settled that a right of review by a Court is a substantive right and is not a matter of procedure and must specifically be conferred by statute.<sup>13</sup> I have carefully reviewed the provisions of the Sindh Consumer Protection Act, 2014 and note that **no right to review has been conferred by that statute.** As no right of review exists within the Sindh Consumer Protection Act, 2014, to this extent, the finding of the Consumer Court that it did not have jurisdiction to review its order is also correct. To my mind as per section 35 of the Sindh Consumer Protection Act, 2014, on the passing of the order dated 8 March 2023 the court was rendered *functus officio* for the purpose of reviewing that order and thereafter had no jurisdiction to entertain an application to review that order and had correctly dismissed it as not being maintainable.

19. Coming to the Petitioners final argument, that this Court should treat the order dated 8 March 2023 as having merged into the order dated 3 April 2023 and this court should reckon the period of limitation under Section 34 of the Sindh Consumer Protection Act, 2014 from 3 April 2023 it has been held by the Supreme Court in Pakistan in **Capital Development Authority vs. Muhammad Zaman Khan**<sup>14</sup>, while examining the Power of the Wafaqi Mohtasib to review its order it was held<sup>15</sup>:

“ ... It is worth mentioning that a review was filed on behalf of C.D.A on 31-10-1988 assailing the said order meaning thereby that the jurisdiction qua review which has been challenged now was involved by the C.D.A. itself knowingly that no such powers were available to the Wafaqi Mohtasib. We are conscious of the fact that no such jurisdiction could have been

<sup>12</sup> See **Ayub Khan and Another vs. Fazal Haq and others** PLD 1976 SC 422 at 429; **Messrs Bambino Limited vs. Messrs Selmor International Limited** PLD 1983 SC 155 at pg 156-157; **Regional Operation Chief, National Bank of Pakistan Human Resource Department, Regional Office, Sargodha vs. Mst. Nusrat Perveen** 2021 SCMR 702 at pg. 708

<sup>13</sup> See **Hussain Bakhsh vs. Settlement Commissioners Rawalpindi and other** PLD 1970 SC 1 at pg. 5; **Muzzafar Ali vs Muhamamd Shafi** PLD 1981 SC 94 at pg. 96 and pg. 98, ; **National Bank of Pakistan vs Islamic Republic of Pakistan** 1992 SCMR 1705 at pg.1711; **Muhammad Sharif vs Sultan Hamayun** 2003 SCMR 1221 at pg. 1228; **Capital Development Authority vs. Raja Muhammad Zaman Khan** PLD 2007 SC 121 at pg. 127-128;

<sup>14</sup> PLD 2007 SC 121, See also **S.A. Rizvi vs. Pakistan Atomic Energy Commission** 1986 SCMR 965 at pg. 968

<sup>15</sup> PLD 2007 SC 121 at pg. 127

conferred with the consent of the party as it was always conferred by the statute. It is well-settled by not that **“right of review is a substantive right and is always a creation of the relevant Statute on the subject.”** The assumption that a review in appeal is a continuation of the appeal, is not correct, with the result that the further corollary drawn therefore in favour of existence of a right of review on that score will also consequentially fail. Again the theory of continuation of trial or proceeding is not conclusive of the existence of a right to make previous judgment open for scrutiny whether by a higher court in form of appeal or the same court in the form of a review. **For example, it will be appreciated that an appeal is regarded as a continuation of trial, but it is well settled that a jurisdiction or right of appeal does exist merely on this theory but is to be created or granted by a statute. If so granted and if invoked or exercised the proceedings in an appeal are considered as a continuation of the trial, but the basic fact remains that the jurisdiction is to be bestowed by statute and statute alone** (Emphasis provided). If this is not done, then the aforesaid theory by itself will not create any right or a jurisdiction of appeal. Assuming without conceding, that a review is also a continuation of the previous proceeding even then before the proceedings are allowed to further continue, in the form of a review, a jurisdiction to do so in this case also must similarly conferred by a statute just like jurisdiction of appeals, the theory of continuation of proceedings will be of no avail. Hussain Bakhsh vs. Settlement Commissioner Rawalpindi and others PLD 1970 SC 1, Muzzafar Ali vs, Muhammad Shafi PLD 1981 SC 94. It may not be out of place to mention here that review was also filed by the respondent against order dated 7-9-1988 passed by the learned Wafaqi Mohtasib. The lawful course for the C.D.A would have been to challenge the order dated 7-9-1988 passed by the learned Wafaqi Mohtasib instead of filing the review...”

I am clear that the argument that has been forwarded by the counsel of the Appellant; that limitation against the order dated 8 March 2023 would commence from the date of the order of dismissal of the application for review i.e., 3 April 2023 on the theory of continuation of trial, is also without basis. As held by the Supreme Court of Pakistan the theory of continuation of trial (which is sometimes referred to as the “doctrine of merger”) “by itself will not create any right or a jurisdiction of appeal” without such a right having been conferred to continue the trial by the statute and as no right to review an order has been conferred under the provisions of the Sindh Consumer Protection Act, 2014, the theory of continuation of trial and the enhancement of the period of limitation is not attracted.

12. In summation,

- (i) the appeal as against the order dated 8 March 2023 passed by the Consumer Court having been brought 22 days after the time period for filing an appeal under Section 34 of the Sindh Consumer Protection Act, 2014 is barred by time and which time cannot be enhanced by the application of the theory of continuation of trial; and
- (ii) the appeal against the Order dated 3 April 2023 passed by the Consumer Court is not maintainable as that order has been correctly passed by the Court that it did not have jurisdiction to review its own order dated 8 March 2023 as no substantive right of review has been given in the Sindh Consumer Protection Act 2014.

This Misc. Appeal is, therefore, not maintainable and had been dismissed by me on 11 May 2023 and foregoing are the reasons of the same.

Karachi;  
Dated; 20 May 2023.

JUDGE

Nasir PS.

