

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Syed Hasan Azhar Rizvi

Civil Appeal No.797 of 2017

[Against the judgment dated 20.02.2017, passed by the Lahore High Court, Lahore in FAO No.115 of 2014]

***M/s Pak Suzuki Motors Company Limited
through its Manager.***

...Appellant(s)

Versus

Faisal Jameel Butt and another.

...Respondent(s)

For the Appellant(s) : Mr. Khalid Ishaq, ASC

Respondent No.1 : Muhammad Ayyub Aheer,
Advocate along with Faisal
Jameel Butt/claimant in
person.

Respondent No.2 : Naveed Akhtar, in person
(via video link from Lahore)

Assisted by : Muhammad Hassan Ali, Law
Clerk, Supreme Court.

Date of Hearing : 23.05.2023

J U D G M E N T

Syed Mansoor Ali Shah, J:- Brief facts of the case are that respondent No.1 purchased a motor vehicle, a Suzuki Swift (model 2010), from the appellant, through respondent No.2 who is a car dealer, for Rs. 1,049,000/-. The said vehicle was delivered to respondent No.1 on 15.05.2010. However, on discovering certain defects in the vehicle, respondent No. 1 issued legal notices to the appellant and respondent No.2 on 10.08.2010 and thereafter filed a claim under Section 25 of the Punjab Consumer Protection Act, 2005 ("**Act**") before the District Consumer Protection Court, Lahore ("**Consumer Court**") on 22.09.2010. The claim was allowed on 19.02.2014 to the effect that

respondent No.1 was granted refund of the price of the vehicle in the sum of Rs. 1,049,000/- along with compensation/litigation costs of Rs. 50,000/-, to be paid by the appellant within 30 days, failing which an additional penalty of Rs. 1,000/- per day was imposed till the realization of the said amount. The appellant filed an appeal under Section 33 of the Act before the High Court, which was subsequently dismissed through the impugned judgment dated 20.02.2017. Leave to appeal was granted by this Court vide order dated 25.05.2017.

2. While arguing the matter, the learned counsel for the appellant submits that the sole evidence placed on the record by respondent No.1/claimant was his own statement/affidavit. He submits that it is for the first time that in the said affidavit, the three defects i.e. one relating to the hatch box not being properly fitted, second relating to the repainting of the colour of the stereo installed in the car and the third pertaining to the alignment of vehicle while driving, were identified by the claimant, which were earlier missing in the claim/pleadings. He further submits that in his cross-examination, the claimant has stated that the defects were based on his general observations and he has also admitted that there is no manufacturing defect in the vehicle. He also submits that the evidence produced by the appellant was through its Assistant Manager Sales, namely Imran Hassan (RW-2), and there is no admission on the part of said representative of the appellant regarding the defects alleged by the claimant. As far as the statement of RW-1, Malik Ijaz-ul-Haq, who is supposedly the manager of respondent No.2/car dealer Adil Ashraf Motors, is concerned, he submits that in his cross-examination RW-1 admits that he has not been authorized by the said car dealer to depose before the Consumer Court. The learned counsel also submits that the said car dealership is neither the agent nor the authorized dealership of the appellant, and therefore, any statement or admission made by RW-1 is not binding upon the appellant.

3. The learned counsel for the appellant has also pointed out that the instant case is barred by limitation as the car was delivered to the claimant on 15.05.2010, thereafter a legal notice was issued to the appellant on 10.08.2010 while the claim was filed on 22.09.2010, which was barred by 23 days even if the period of limitation is worked out from the date of the notice. He submits that no application for condonation of such delay was moved by the claimant as per the provisos to Section 28(4) of the Act. He further submits that the claim is devoid of any specific allegation regarding the defects in terms of Sections 5, 6, 7 and 8 of the Act. He further contends that neither any expert was called by the Consumer Court nor any application was given by the claimant to call an expert to examine the vehicle to ascertain the defects as envisaged in Section 30(1)(c) of the Act. On the other hand, the learned counsel for respondent No.1 has controverted the above contentions and has supported the impugned judgment.

4. We have heard the learned counsel for the parties and have perused the record with their able assistance. At the very outset, we have noticed that the claim filed by respondent No.1/claimant does not make any specific mention of the alleged defects in the vehicle. Even the legal notices sent by respondent No.1 make no mention of any specific defects. It was only in his affidavit, submitted as his examination-in-chief, that he mentioned the above defects. It is settled law that a litigant is required to plead all material facts that are necessary to seek the relief claimed and then to prove the same through evidence. Parties are required to lead evidence in consonance with their pleadings and no evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings.¹ Notably, respondent No.1 also admitted in his cross-examination that he had not described the specific defects in the vehicle in his pleadings/claim. Therefore, the defects alleged in the affidavit of respondent No.1

¹ Muhammad Ghaffar v. Arif Muhammad, 2023 SCMR 344; Saddaruddin v. Sultan, 2021 SCMR 642; Moiz Abbas v. Latifa, 2019 SCMR 74; Muhammad Tariq v. Shamsa, PLD 2011 SC 151.

were beyond the scope of the pleadings and, hence, could not have been considered.

5. Furthermore, even otherwise, despite alleging such technical manufacturing defects in the vehicle, no expert evidence was led by respondent No.1 or invited by the Consumer Court under Section 30(1)(c) of the Act to prove that the said defects alleged by respondent No.1 actually existed. Instead, the Court relied only on the evidence of respondent No.1, who is not an expert in the automotive industry, and firstly deposed in his cross-examination that the alleged defects were based on his general observations regarding the vehicle and then stated that there were no manufacturing defects in the vehicle. It is apparent that at least two of the defects alleged by the claimant, i.e. with regards to the hatch box and the colour of the stereo, were of such nature that could not have been ascertained without expert inspection.² Where the defects alleged are of such a nature that require expert inspection or probe, the onus to provide such expert evidence falls on the consumer who is alleging that the product is defective or faulty. Where such defects are alleged by the consumer, a Consumer Court, before deciding that a certain product is defective or faulty, must satisfy itself that sufficient expert evidence is available and can be relied upon to ascertain the defects so alleged instead of merely placing reliance on the statement of a consumer who may not be from the related field of expertise and therefore, not competent to address the technicalities forming part of the alleged defects, especially where the claim of the consumer is denied by the manufacturer. To this effect, Section 30(1)(c) of the Act allows the Consumer Court to invite expert evidence, if required, where the claim alleges that the products are defective and do not conform to the accepted industry standards. Additionally, Section 30(1)(d) of the Act provides that where the dispute cannot be determined without proper analysis or test of the products, the Consumer Court shall obtain a sample of the

² Plum Qingqi v. Muhammad Moeed, 2015 CLC 1538 Lahore; Muhammad Aslam v. General Manager Pioneer Pakistan Seed Limited, 2014 CLD 257 Lahore; Dawlance v. Muhammad Jameel, 2012 CLD 1461 Lahore.

products from the claimant and refer the same to a laboratory to make analysis or test with a view to find out if such products suffer from any defect, which may be paid for by the claimant, or if the test or analysis supports the version of the claimant, then to be paid by the defendant, as stipulated under Section 30(1)(e) of the Act. In the instant case, the onus to prove the alleged defects was on respondent No.1, which he failed to do. No expert evidence was produced by respondent No.1 or invited by the Consumer Court to ascertain whether the alleged defects existed in the vehicle. Therefore, respondent No.1 failed to prove that the vehicle was defective in construction or composition as required under Section 5 or that it was otherwise defective for the purposes of any other provision of the Act.

6. We have noted that even when respondent No.1 had failed to provide any proof regarding the defects alleged in his affidavit, the only reason that the Courts below decided the matter in favour of respondent No.1 was the supposed admission by the appellant in para Nos. 6 and 7 in its written reply to the claim and an admission by RW-1, the witness of respondent No.2, with regards to the vehicle being defective. A perusal of the written reply by the appellant indicates that no admission with regards to alleged defects was made by the appellant and the appellant has specifically denied the assertions made by respondent No.1 in para Nos. 6 and 7 in the claim wherein he had alleged that the appellant's technical staff had admitted the defects in the vehicle. Instead, the appellant stated that it had dispatched its team to facilitate respondent No.1 as per company policy, however, respondent No.1 did not cooperate with them. As far as the admission by RW-1 is concerned, we have noted that the said witness did not produce any authority letter authorizing RW-1 to depose on behalf of respondent No.2, and therefore, failed to provide any proof as to his authority to depose on its behalf. Even otherwise, he specifically admitted in his cross-examination that respondent No.2 is not a dealer of the appellant, hence, it is apparent that respondent No.2 was not the appellant's agent and

any admission made vis-à-vis the obligations of the appellant holds no legal value. It is settled law that the admission of a co-defendant is not binding on the other and therefore, the claim could not have been decided against the appellant based upon the admission made by RW-1.³ Notably, he too in his admission failed to mention any specific defect in the vehicle to which he was admitting. Therefore, despite respondent No.1's failure to prove any defect in the vehicle for the purposes of his claim under the Act, the judgments of the Courts below, premised mainly on the above admission by RW-1, are not sustainable.

7. Coming to the question of limitation raised in the instant matter, we have observed that there are contradictory judgments of the Lahore High Court with regards to the commencement of the limitation period of 30 days provided under Section 28(4) of the Act for filing a claim; in *Muhammad Ashraf*⁴ it has been held that the cause of action accrues in favour of the claimant the moment the goods or services turn out to be defective and/or in violation of the provisions of the Act, whereas, in *Deltex*⁵ it has been held that the terminus quo for counting the limitation period is the date when the time of 15 days expires after receiving the written notice under Section 28(1) of the Act. Therefore, we deem it appropriate to first settle this question of law.

8. Section 28 of the Act provides for settlement of claims and also stipulates the limitation period for filing of a claim by a consumer. For reference, Section 28 of the Act is reproduced as under:

28. Settlement of Claims.– (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer or service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the

³ Farzand Ali v. Khuda Bakhsh, PLD 2015 SC 187; Shah Muhammad v. Dullah, 2000 SCMR 1588.

⁴ Muhammad Ashraf v. Sh. Muhammad Akram, PLD 2022 Lahore 414.

⁵ Deltex Courier Service v. Sajid Imran Gill, 2019 CLC 1041 Lahore.

consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall, within fifteen days of the receipt of the notice, reply thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section (1) and provides proof that the notice was duly delivered but the manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of services.

A perusal of the above provision indicates that before filing a claim before the Consumer Court, the consumer or the Authority⁶ has to issue a written notice under Section 28(1) to the manufacturer or service provider notifying him of the defect in the product or service or if the conduct of the manufacturer or service provider is in contravention of the provisions of the Act, seeking that he should remedy the defect or give damages, or cease to contravene the provisions of the Act. Under Section 28(2), the manufacturer or service provider is to respond to the notice within 15 days. Section 28(3) provides that no claim shall be entertained by the Consumer Court unless the consumer provides proof of sending and delivery of the said notice. Section 28(4) stipulates that a claim shall be filed within 30 days of the arising of the cause of action. The provisos to Section 28(4) provide that the Consumer Court may extend this limitation period beyond the period of 30 days if it is satisfied that there was sufficient cause for not filing the complaint within the specified period, however, this extension shall not be beyond a period of 60 days from the expiry of the warranty or

⁶ "Authority" has been defined in Section 2(b) as "the District Coordination Officer of the district concerned or any other officer as may be notified by the Government".

guarantee period specified by the manufacturer or service provider, or if no period is specified, then one year from the date of purchase of the product or provision of service.

9. In our view, even though no limitation period is provided for sending a written notice under Section 28(1) of the Act, it is apparent that Section 28(4) of the Act in unequivocal terms stipulates and clarifies that a claim with regards to a defective or faulty product or service, or contravention of the provisions of the Act by the manufacturer or service provider, has to be filed within 30 days of the arising of the cause of action. The cause of action, in such circumstances where a product or service is faulty, therefore, arises the moment the consumer obtains knowledge that the product or service is defective or faulty. If the provision is interpreted to mean that despite having knowledge of the defect in the product or the service, the consumer can issue a written notice under Section 28(1) of the Act at any time the consumer desires, pursuant to which, after 15 days of such receipt of the notice, the cause of action for the purposes of the 30-day limitation period would ensue, this would make Section 28(4) of the Act as redundant, and a claim under the Act can be filed at any time without any limitation period subsequent to obtaining knowledge of the defect or fault in the product or the service.

10. The limitation period in such consumer protection claims becomes more significant especially because claimants should bring a claim as quickly as possible due to the potential depreciation of the product in question, the characteristics of which may differ according to the specific product. Delaying the filing of a claim can lead to challenges in establishing the product's condition at the time of purchase and linking any defects to the consumer's use or handling. As time passes, the product may deteriorate, be repaired or modified, or become unavailable, making it more difficult to prove the defects or assess its original condition. Bringing a claim promptly helps ensure that the product's condition and any defects can be accurately evaluated

and documented. This can also contribute to a stronger case by providing evidence that directly supports the consumer's claim. Additionally, timely action demonstrates the consumer's diligence and commitment to addressing the issue.

11. The legislative intent behind Sections 28(1), (2) and (3) of the Act is to grant rights to both the consumer and the manufacturer or service provider to address the defects or faults in the product or service before the matter proceeds to litigation. It ensures that the consumer firstly brings the issue to the attention of the manufacturer or the service provider through a written notice, so that the defect or fault is rectified and they fulfill their obligation to the consumer before the consumer has to file a claim before the Consumer Court, so that there is a possibility of settling the claim of the consumer without the need to initiate litigation, which would be more cumbersome for a simple consumer. At the same time, it also affords the manufacturer or the service provider the right to respond to the notice within a specified timeframe, enabling them to address any legitimate concerns, protect their reputation, and mitigate potential costs that may be incurred under the Act. In effect, it provides for a mechanism to settle the dispute before initiation of litigation and the same cannot be construed as giving a fresh cause of action wherefrom the 30-day limitation provided under Section 28(4) would commence. Therefore, when the consumer obtains knowledge of the defect or fault in the product or the service, the 30-day limitation period stipulated under Section 28(4) of the Act commences. It is during this period that the consumer has to first put his grievance before the manufacturer or service provider, seeking rectification of the defect or fault in the product or service, or damages, and provide 15 days to the manufacturer or service provider to remedy the same, as required under Section 28(2). It is only after the manufacturer or the service provider responds to the written notice, or where he fails to respond within the stipulated 15-day period, that the consumer can file a claim before the Consumer Court if the cause of action still subsists. The consumer can still

file a claim before the Consumer Court by giving sufficient cause for filing the claim beyond 30 days which will be examined by the Consumer Court, as per the provisos to Section 28(4) of the Act.

12. In the instant case, the vehicle was delivered to respondent No.1 on 15.05.2010 and respondent No.1 has admitted in his cross-examination that he obtained knowledge of the defect in the hatch box on 17.05.2010 and the other defects were also apparent in his view. Thereafter, a written notice was sent to the appellant on 10.08.2010, which was responded to by the appellant on 18.08.2010, whereafter, the claim was filed on 22.09.2010. Therefore, despite having knowledge of the defects on 17.05.2010, respondent No.1 had sent the written notice to the appellant after almost 03 months on 10.08.2010, during which the 30-day limitation period provided under Section 28(4) had expired. Respondent No.1 had also not applied for extension of time by showing sufficient cause for the extension of the limitation period under the provisos of Section 28(4) of the Act. It is settled law that that limitation is not a mere technicality, and where the limitation period has expired, a right accrues in favour of the other side which cannot be lightly brushed aside.⁷ The claim filed by respondent No.1, therefore, was also barred by limitation.

13. In view of the above, the instant appeal is allowed. The impugned judgment is set aside and the claim filed by respondent No.1 stands dismissed.

JUDGE

Bench-IV
Islamabad
23.05.2023
APPROVED FOR REPORTING
Rabbani*/

JUDGE

⁷ Muhammad Anwar v. Essa, PLD 2022 SC 716; Asad Ali v. The Bank of Punjab, PLD 2020 SC 736.