

2024 C L C 1575

[Peshawar (Abbottabad Bench)]

Before Kamran Hayat Miankhel; J

HONDA ATLAS CARS PAKISTAN LIMITED
and another----Appellants

versus

SALEEM AKHTAR FAROOQ and others----Respondents

F.A.O. No,09-A of 2021, decided on 1st November, 2022.

Khyber Pakhtunkhwa Consumers Protection Act (VI of 1997)---

---S. 12---Qanun-e-Shahadat (10 of 1984), Art. 91---Complaint before the Consumer Court---Genuineness of document---Presumption of correctness---Document produced as evidence admitted without any objection---Effect---Oral evidence---Scope---Claim / stance of the claimant (buyer of vehicle) before the Consumer Court, was that an extra amount was recoverable from Automobile Manufacturing Company (company) which was illegally charged to him at the time of delivery of vehicle, which amount he paid under protest---Consumer Court allowed the complaint against which judgment debtor / company preferred appeal---Validity---Record revealed that, in support of his contention, respondent/ complainant himself appeared as a witness and reiterated the stance taken by him in his complaint and only produced the concerned Manager but no other document was produced by him to substantiate his plea that the respondent could not charge him for any excess price of the vehicle at the time of its delivery---Conversely, the appellants produced one witness, who exhibited three documents i.e. authority letter, relationship contract, delivery order and one relating to Federal Excise Duty---Said witness further stated in his statement that duly exhibited relationship contract contained the signature of respondent /complainant---Said relationship contract reflected that the price prevailing at the time of delivery would be charged---Presumption of correctness was attached to the relationship contract which was duly exhibited without any objection from other side---When a document is produced and exhibited without objection, it always carries sanctity and strong evidence is required to cast an aspersion on its genuineness---Such document is binding on the parties to the lis---Under Art. 91 of the Qanun-e-Shahadat, 1984, once a document is produced as evidence and admitted in evidence without

any objection, it amounts that the same has been duly proved--- While there were contradictions regarding place of agreement and handing over pay-orders etc., in oral evidence but the documentary evidence prevailed over the oral evidence---Oral evidence does not exclude documentary evidence---Document can be rebutted by a document only---Oral evidence of respondent / complainant could not rebut the documentary evidence of appellants---Respondent /complainant while examining one of the witnesses of appellants put conceding questions, thus proving that agreement took place at company (appellant's) showroom---Said conceding questions and their answers clearly depicted that the signatures on the relationship agreement were that of respondent / complainant---High Court set-aside the impugned judgment passed by the Consumer Court---Consequently, the complaint filed by the respondent stood dismissed---Appeal was allowed, in circumstances. [pp. 1577, 1578, 1579] A, B, C & D

Sher Muhammad v. Muhammad Khaild 2004 SCMR 826 ref.

Usman Nasir Awan for Appellants.

Asad Tanveer Qureshi for Respondent No.1.

Date of hearing: 1st November, 2022.

JUDGMENT

KAMRAN HAYAT MIANKHEL, J.----Through Instant appeal. the appellants have assailed the Judgment dated 17.02.2021 passed by the learned Judge Consumer Court, Abbottabad whereby compliant bled by respondent No.1 was allowed.

2. Brief facts of the case are that respondent No.1 filed complaint against the appellants and respondents Nos.2 to 5 before the learned Judge Consumer Court, Abbottabad. The respondent No.1 alleged in his complaint that he is the resident of Abbottabad, a businessman and regularly pays Income Tax to the Government of Pakistan. He averred in the complaint that on 04.04.2019 he visited Honda Atlas Show Room situated at Islamabad, where he opted to purchase Honda City ASP-1.5 and on the spot representative of the company namely Asmat Senior Manager (respondent No.4) apprised him of the full details that if he pay half price in advance the company will give the vehicle within three months after payment of the outstanding half and in case he pay full price in advance the vehicle shall be delivered within 1-1/2 months and if the company made any increase in the price the same will not be applicable on him as he had paid the whole price in advance. The said Asmat contacted his General Manager Sales i.e. respondent No.3 who

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also confirmed that as he had to pay the whole price in advance, the increase shall not be applicable against him. On the next day he sent pay order of Rs.12,00,000/- in the name of Honda Atlas Cars Pakistan Limited. He contacted the respondent No.4 who again confirmed that if he paid the whole amount in advance any increase in future in the sale price of the vehicle in question shall not be applicable against him. After complete confidence he further paid amount of Rs.11,37,500/- through Bank Draft No.05187018 and on 05.04.2019 he went to Islamabad Show Room and paid both the pay orders for a sum of Rs.23,37,500/- to respondent No.4 as full price of car and his booking Order No.28001860 was noted. After 1-1/2 months he demanded his vehicle, however, the respondents started delaying tactics and on 10.07.2019 he received a totter from respondent No.5 demanding illegal amount of Rs.4,27,500/-, however, he through letter told the respondents that as he had paid the whole amount in advance they cannot demand the disputed amount of Rs.4,27,500/- from him. The respondents did not give any reply and orally stated that if he failed to pay the said amount the vehicle shall not be delivered to him due to which he under protest paid the amount in dispute to the respondents. The present appellants appeared before the learned Judge Consumer Court and contested the complaint by filing their written reply while respondents Nos.2 to 5 were placed ex-parte. The learned Judge Consumer Court, Abbottabad after recording evidence and hearing arguments of learned counsel for parties vide judgment dated 17.02,2021 allowed the complaint filed by respondent No.1, hence, the Instant appeal.

3. Arguments heard and record perused.

4. The record transpires that the respondent No.1 filed complaint against the present appellants and respondents Nos:2 to 5 before Judge Consumer Court, Abbottabad for recovery of Rs.4,27,500/- which was deposited by him under protest. In support of his contention, respondent No.1 himself appeared as PW1 and reiterated the stance taken by him in his complaint and also produced Sardar Sajid Hussain, Manager Personal Banking, Meezan Bank City Branch, Abbottabad but no other document produced by him to substantiate his plea that the respondents will not charge him for any excess price of the vehicle at the time of its delivery. Conversely, the present appellants produced one Arif Hussain Awan as RW-1, who exhibited authority letter as Ex:R-1, relationship contract as Ex:R-2, delivery order as Ex:R-3 and Federal Excise Duty as Ex:R-4. This witness further stated in his statement that relationship contract (Ex:R-2) contained the signature of respondent No.1. This relationship contract (Ex:R-2) reflects that price prevailing at the time of delivery will be charged.

5. Presumption of correctness is attached to the relationship contract which was exhibited as Ex:R-2 without any objection from other side. When a document is produced and exhibited without objection, it always carries sanctity and strong evidence required to cast an aspersion on genuineness. Such document was binding on the parties to the lis. Under Article 91 of the Qanun-e-Shahadat Order, 1984 once a document produced as evidence and admitted in evidence without any objection it amounts that same had been duly proved. It would be relevant to reproduce Article 91 of the Qanun-e-Shahadat Order as under:

"91. Presumption as to document produced as record of evidence. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or Magistrate or by any such officer as aforesaid, the Court shall presume:

That the document is genuine; that any statement as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."

6. Now the question is whether the respondent No.1's evidence is sufficient to prove that the appellants have received excess amount from him. The respondent No.1 produced oral evidence and in his cross he stated that respondent No.4 came to his filling station and received the two pay orders from him but in Para 4 of his complaint he categorically averred that he went to showroom situated in Islamabad and handed the pay orders to respondent No.4, so the respondent No.1 cannot blow hot and cold in one breath. In contrast the appellants produced relationship contract as Ex:R-2 to prove their version. Admittedly the documentary evidence prevails over the oral evidence. Oral evidence does not exclude documentary evidence. Document can be rebutted by document only. The oral evidence of respondent No. 1 could not rebut the documentary evidence of appellants. The respondent No.1 complainant while cross examining RW-1 put conceding questions, thus proving that agreement took place at company showroom at Mirpur Azad Kashmir. Relevant extract of cross examination is reproduced below:-

Relationship agreement میر پور آزاد کشمیر میں ہوا تھا۔ از خود کہا کہ
AK128001860 میر پور آزاد کشمیر کا ہے۔

The RW-1 also replying to a question as follows:-

یہ درست ہے کہ Complainant کی شناختی کارڈ کی کاپی معاہدے کے ساتھ لف ہے۔ یہ
درست ہے کہ Complainant کے Relationship contract کے سائن اور
قومی شناختی کارڈ کے سائن ملتے ہیں۔

The above conceding questions and their answers clearly depicts that the signatures on the relationship agreement are that of respondent No.1/complainant. Reliance in this regard is placed on Sher Muhammad v. Muhammad Khaild (2004 SCMR 826 Supreme Court) wherein, this Court held the following:-

"The concurrent findings of the said learned Courts are based on the overwhelming documentary evidence available on record. Both the Courts were one in holding, and rightly so, that oral evidence which was contrary to the documentary evidence could not be given preference over the said documentary evidence. The only two entries i.e. relating to Rabi 1973 and Kharif 1973 which stood in favour of the petitioner-plaintiff were directed to be removed by the Collector of the District on an appeal filed before him. He had further ordered that the entries as they existed in Rabi 1972 should be restored. This order of the Collector was maintained in the second appeal filed by the petitioner before the Additional Commissioner of Sargodha who had dismissed the said appeal through an order dated 13-6-1979. In this view of the matter, the Honourable High Court and the learned Appellate Court were justified in holding that the oral evidence offered by the petitioner-plaintiff which was not supported by the strong documentary evidence available on record, could not be given any credit. The concurrent conclusions reached and the reasons offered therefore could not be said to be based either on misreading or non-reading of evidence."

7. In view of the above discussion, this appeal is accepted and the Impugned Judgment dated 17.02.2021 passed by learned Judge Consumer Court, Abbottabad is hereby set aside and the complaint filed by respondent No.1 stands dismissed.

MQ/96/P

Appeal allowed.