

Judgment Sheet

IN THE LAHORE HIGH COURT

MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

F.A.O.No.130 of 2016

Muhammad Amin

Versus

Muhammad Sarwar

JUDGMENT

Date of hearing:	05.10.2017
Appellant by:	Malik Mulazim Hussain Jamshed, Advocate.
Respondent by:	Ch. Muhammad Siddiq, Advocate.

MUJAHID MUSTAQEEM AHMED, J: By filing instant appeal in terms of Section 33 of the Punjab Consumer Protection Act, 2005 (The Act), the appellant has assailed the legality of the order dated 18.11.2016, passed by learned District Consumer Court, Multan (Consumer Court), mainly on the grounds of against facts and law, based on misreading and non-reading of evidence.

2. The pithy facts giving rise to this appeal and necessary for its fair adjudication are that respondent is cultivator by profession, permanent customer of appellant, who is sellor of vegetable seeds etc. under the name and style “Lal Seed Shop”, near Dera Gunjianwala Main Bazar, Lothdar Station, Riazabad, Multan. The respondent in year 2015, purchased 2-Kg hybrid seed of Coriander (seed) for Rs.8800/- from the appellant vide receipt Mark-B and after preparing the land measuring 6

Kanal by incurring Rs.59,795/-, had sown the seed but the crop in its inception born the flowers and thus it transpired that the seed was of substandard quality. The respondent alongwith witnesses contacted the appellant, apprised him of the facts, invited him to visit the field and compensate him but without any positive response from the appellant side. As such after issuance of legal notice under Section 28 of the Act, respondent filed complaint before District Consumer Court with the prayer of awarding following relief:-

- i. *Costs, labour and lease of land Rs.74795/-*
- ii. *Damages of mental agony, physical labour fatigue, injury and other financial loss, assessed at Rs.100,000/-*
- iii. *Professional fee of lawyer Rs.15,000/-*

The appellant conceded that respondent has purchased seed from him but contested the complaint mainly on the ground that as per respondent's own case, all the seeds were germinated and for complete and proper growth of the crop, weather, requisite temperature, nature of land etc play vital role. After proper germination of the crop, the appellant's liability came to an end. Both the parties led evidence in support of their respective claims. After hearing the arguments of learned counsel for the parties, vide impugned order dated 18.11.2016, Consumer Court partly allowed the claim of respondent in the following terms:-

'Complainant is entitled to get an amount of Rs.30,000/- approximately being expenses for the preparation of six kanal of land i.e expenses incurred on rutaveter, tractors computerized laser leveler as well as expenses of the irrigation by tube-well as well as purchase of fertilizer and pesticide alongwith refund of price of seed to the tune of Rs.8800/- as well as Rs.20,000/- as compensation for not issuing the purchase receipt alongwith fee of counsel to the tune of Rs.15,000/-.'

The appellant being dissatisfied with the impugned order has assailed the same by filing appeal in terms of Section 33 of the Act.

3. Learned counsel for the parties have been heard at length and record perused.

4. Respondent appeared as PW-1 and submitted his affidavit Exh.P1. Muhammad Irfan-PW2 and Muhammad Ashraf-PW3, agriculturist by profession, in support of respondent's case, submitted their affidavits Exh.P4 and Exh.P5 respectively and deposed that they have inspected coriander crop, sown by respondent but the seed was not hybrid one. In its rebuttal, the appellants as DW-1 submitted his affidavit Exh.D1 and reiterated the version noticed supra, taken in the written statement. Haji Muhammad Asghar-DW2 in his affidavit Exh.D2 supported the version of appellants.

5. It is not in dispute that respondent has purchased the seed from appellants. The only question involved in this appeal is whether the purchased seed was hybrid or substandard/misbranded one. PW-1/respondent is cultivator by profession and growing vegetable since long and also purchasing seed from appellants. Respondent, PW-2 and PW-3 on the basis of their rich experience have stated on oath, before the learned Consumer Court that the seed sold by appellants was substandard one and thus respondent could not get the bumper crop and suffered fiscal loss and mental agony. As rightly noticed by the learned Consumer Court, the appellants have offered Rs.30,000/- to respondent to compensate him. This fact also indicates that the appellants have conceded their liability towards sale of substandard seed/'misbranded seed'. Still I am of the view that respondent was under legal obligation to get his crop inspected from Agriculturist, Agriculture Officer or any expert of Research Center to obtain expert report/lab report of the plants to corroborate his version. The laboratory tests and analysis of such experts are quite helpful to determine the controversial issue, involved in such like cases. Reliance is placed on 'Muhammad Aslam Versus General Manager Pioneer Pakistan Seed Limited, Lahore and 4 others' (2014 CLD 257 Lahore). Moreover, some sample of misbranded seed could also be produced before the Court to carry out analysis of seed from Seed Testing Laboratory established by the Federal Government under the Seed Act, 1976 (XXIX of 1976) to

strengthen and corroborate respondent's case. No cogent or valid reason for such failure has been brought on record. The Consumer Court has awarded respondent compensation of Rs.30,000/- for preparation of land etc. But the person who has prepared the land of respondent has not appeared in witness box to prove this expenditure and its receipt from respondent. As such in view of peculiar facts and circumstances of the case this amount is further reduced to Rs.25,000/- only. The respondent has been awarded price of seed, counsel fee as noticed supra and the impugned order to this extent is quite perfect, valid and legal.

6. Learned Consumer Court has also awarded Rs.20,000/- as compensation to respondent for non-issuance of receipt of sale of seed. Suffice to observe that respondent has placed on record undated receipt (not on proper pad) Mark-B issued by appellant. As such the appellant has violated mandatory provision of Section 19 of the Act but while awarding compensation to the respondent under Section 31 of the Act, the learned Consumer Court was not justified to award compensation Rs.20,000/- for violation of Section 19 of the Act. Section 32(1) of the Act deals with penalties and for convenience sake the same is reproduced here under:-

‘32. Penalties.- (1) *Where a manufacturer fails to perform or in any way infringes the liabilities provided in sections 4 to 8, 11, 13, 14, 16, 18 to 22, he shall be punished with imprisonment which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation as may be determined by the court.’*

The bare perusal of above section makes it crystal clear that only a “manufacturer” can be punished and also directed to pay compensation for violation of Section 19 of the Act. So, the impugned order to the extent of awarding compensation Rs.20,000/- in violation of the said provision of law is not sustainable.

7. In view of what has been noticed and discussed above, instant appeal is partly allowed. The impugned order is modified and the respondent would be entitled to recover Rs.25,000/- as expenses incurred for preparation of land, its irrigation by tube-well, price of fertilizer and pesticide. He would also be refunded price of seed Rs.8800/- and counsel fee Rs.15,000/-, total Rs.48,800/- (Forty eight thousand and eight hundred only) from the appellant. To the extent of remaining prayer the appeal is dismissed.

8. Before parting with this judgment it may be observed that under Section 22-C of The Seed Act, 1976 no person shall sell crop seeds at any place except under the terms and conditions of dealership license issued in his favour. Section 22-E of the Act stipulates that no person can conduct seed business in Pakistan unless he is registered to do such business under Section 22-B, 22-C or 22-D. Section 23 of the Seed Act, 1976 deals with offences and penalties for violation of provisions of the Act which runs as under:-

“23. Offences and penalty. Whoever-

- (a) contravenes any provision or any rule under this Act; or
- (b) imports, sells, holds in stocks or exhibits for sale or barter or otherwise supply any seed of any kind or plant variety or hybrid deemed to be misbranded; or
- (c) imports, sells, holds in stocks or exhibits for sale or barter or otherwise supply any seed of any kind or plant variety or hybrid which is not a registered or enlisted plant variety or hybrid; or
- (d) prevents a Seed Certification Officer or a Seed Inspector from taking a sample or inspecting seed under this Act; or
- (e) Prevents any official from exercising any power conferred on him by or under this Act,

Shall be punishable,-

- (i) for the first offence, with imprisonment for a term which may extend to three

months or with fine not exceeding two hundred thousand rupees; and

- (ii) for every subsequent offence, with imprisonment for a term which may extend to six months or with fine not exceeding six hundred thousand rupees or both.”

9. From perusal of the above provisions of the Seed Act, 1976 it is manifest that a detailed and effective procedure has been prescribed for ensuring that misbranded seed by unauthorized dealers/shopkeepers are not supplied to the peasants/farmers/cultivators. But it is ground reality that the Seed Inspectors appointed under Section 19 of the Seed Act of 1976 are not vigilantly performing their duties and playing their effective role to stop illegal and unauthorized business of seed. Resultantly the business of supply of misbranded seed by unauthorized persons is rampant, adversely affecting business of agriculturists/farmers, who are already facing financial crises and hardships. Whereas agriculture is backbone of our economy. The Federal Government should ensure that provisions of the Seed Act, 1976 are enforced and complied with in letter and spirit. Copy of the judgment be sent to the Secretary, Government of Pakistan, Ministry of Food, Agriculture & Co-operatives, Islamabad to ensure compliance.

(Mujahid Mustaqeem Ahmed)
Judge

Approved for reporting.

Judge

Shahzad Ahmad Nasir