JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 103 of 2016

Malik Fahad Sultan

Versus

Umair & 2 Others

Date of Hearing	:	13.04.2022.
Appellant by	:	Appellant in person.
Respondent by	:	Nemo.

ARBAB MUHAMMAD TAHIR, J. The instant criminal appeal is arising out of order dated 15.04.2016, passed by the Additional Sessions Judge/Authority Islamabad (West), whereby complaint filed by the appellant under the Islamabad Consumers Protection Act, 1995 (**"Act of 1995"**), was dismissed.

2. Precisely, facts giving rise to filing of the instant appeal are that on 14.03.2016 the appellant has filed a complaint under the Act of 1995 against the respondents with the contention that on 03.01.2015 he purchased a pair of branded shoes of the make "CAT" ("**goods**") having lifetime guarantee for Rs.7,200/- but after few days, the heel of the goods damaged and when the complainant approached the respondents with complaint and for return of sale price, the latter refused which constrained him to file the complaint under the Act of 1995.

3. The Authority/ASJ, Islamabad (West) on tentative assessment of the complaint, issued notice to the respondents under Section 8(4) of the Act of 1995. The respondents entered appearance and filed reply wherein they controverted the stance of the appellant in terms that the goods were never purchased from their shop; that the complainant had no proof of the same like purchase receipt and warranty card and that in order to perceive their goodwill, they got repaired the goods at their own and that the appellant compelled them to pay Rs.10,000/- along with the repair goods and that the complaint is baseless.

4. After hearing the respondents, the complaint was dismissed vide order dated 15.04.2016 in following terms:-

> "Careful perusal of the record reveals that **the complainant did not produce the original sale receipt and warranty card.** He annexed photocopy of a card of look & take. The Photocopy is not sale receipt, on back side of the said card the word shoe repairing CAT has been mentioned. **The complainant failed to produce any proof that he purchased the shoes from shop of the respondents. Today court waited him since morning**. The complainant has failed to prove unfair practice, defective service or providing defective product on the part of the complainant.
>
> In the light of above discussion complaint is dismissed. File be consigned to record room after its completion and compilation."

5. The appellant questioned the order ibid on the grounds that he had been condemned unheard as the complaint was decided in his absence without affording opportunity of hearing and that the observations qua non-submission of purchase receipt is contrary to record as the same is available on the file of instant appeal, wherein the Credit Card Statement clearly shows a transaction with the respondents' shop at the relevant time, therefore, impugned order is liable to be set aside.

6. Heard, record examined.

7. As regards non-provision of opportunity of hearing, it is noticed that on the date fixed i.e. 15.04.2016, the file was kept in wait till last moment of the court hours and there-after the Authority proceeded to decide the complaint on the basis of material available on file. In the attending circumstances of the case when the complaint of the appellant was found without any proof, there was no justification to keep it pending as in terms of Section 8(4) of the Act of 1995 after considering the complaint and the reply of the respondent and after providing the parties an opportunity of being heard, or if no reply is received and after such

inquiry as the Authority my deem appropriate it may pass such orders as the circumstance may require.

8. On merits, the appellant has relied upon "*Credit Card Statement of Account*" and an email sent to CAT Footwear US to substantiate the stated sale transaction.

9. From perusal of referred *Statement Of Account* it reveals that the same pertains to the transactions made during the period "*09.01.2014 to 08.02.2014*". The date of the transaction with the shop of respondents *Look & Take* is 23.01.2014 for Rs.5200/-. This entry did not lend support to the stance of the appellant rather runs counter to it as according to complaint, appellant had purchased the goods for Rs.7200/- from the shop of the respondents on 03.01.2015 and filed the complaint on 14.03.2016.

10. The divergence inter se the entry referred above and the complaint smashed the stance of the appellant being pressed in the instant appeal as the entries pertain to the period between *09.01.2014 to 08.02.2014* while the appellant claims to have purchased the goods in *January 2015 for Rs.7,200/-* while the consideration of the goods purchased on 23.01.2014 is mentioned as *Rs.5,200/-.*

11. Another important aspect of the matter is that the contents of the Email sent to CAT Footwear did not reveal as to whether the appellant had purchased the goods from the respondents as he had mentioned in the Email that he purchased "CAT shoes from Capital Islamabad of Pakistan". In addition, it was specifically mentioned in the Email that he went to exchange those shoes in the Franchise of Caterpillar but they refused and got stitched the upper leather sole. These contents lend support to the stance of the respondents that they got repaired the goods as a gesture of goodwill and that the appellant never purchased the goods from their outlet.

12. In view of above, the Credit Card Statement and the Email did not lend support to the claim of the appellant that he purchased the goods from the shop of the respondents as nothing is envisaged therein which could be made basis to accede to the

claim of the appellant. No other document has been annexed with the appeal to substantiate the said claim. Since the appellant has failed to produce proof of purchase of the goods from the shop of the respondents, there left no need to dilate upon the alleged *unfair trade practice*. Consequently, instant appeal fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

AR.Ansari