

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-626 of 2023

CP No.D-627 of 2023

Altaf Habib Jangda

v. Osama Hasan Mustafvi & others

Date of hearing: 10.5.2023

Mr. Muhammad Saad Siddiqui, Advocate for the Petitioner

Mr. Osama Hasan Mustafvi, Advocate/Respondent in person.

AHMED ALI M. SHAIKH, CJ.- By this consolidated order we intend to dispose of the captioned petitions arising out from one and same proceedings viz. Complaint No.12 of 2022, filed by the Respondent No.1 against the Petitioner and Respondent No.2 and another, wherein the Consumer Protection Court Karachi East (the “**trial Court**”), vide separate orders both dated 15.12.2022 dismissed the Petitioner’s Application under Section 29(1)(3) of the Consumer Protection Act, 2014 (the “**Act**”) and allowed Application of the Respondent No.1 made under Section 29(4) of the Act, condoning the delay in filing the claim beyond the prescribed period of limitation of thirty days.

2. Briefly facts of the case are that the Respondent No.1 booked a Suzuki Alto VXL AGS (the “**Car**”) and paid the purchase price on 25.8.2021 for its delivery tentatively on 30.10.2021. As the Petitioner delivered the Car on 07.01.2022, the Respondent No.1 after serving a notice filed the Complaint, inter alia, seeking exchange of the Car with model of 2022, compensation and damages. Before the trial Court, the Petitioner filed an Application under Section 29(1)(3) of the Act seeking dismissal of the complaint as the Respondent No.1 has served the notice regarding delivery of the Car but filed the Complaint for exchanging it. The Respondent No.1 also filed an Application in terms of Section 29(4) of the Act seeking condonation of delay. The trial Court after hearing the parties, rejected the Petitioner’s Application and while accepting the other Application condoned the delay vide impugned order dated 15.12.2022.

3. Learned counsel for the Petitioner contended that the trial Court did not take into consideration the factual as well as legal aspects of the proceedings and without applying judicial mind dismissed his Application. He submitted that it was a mandatory requirement that before filing the complaint/claim the consumer ought to have issued a notice to the manufacturer and or service provider for compensation and or damages, etc. Counsel pointed out that the Respondent No.1 served notice regarding delayed delivery of the Car and not for its exchange/replacement nor for damages as prayed for in the Complaint. He argued that there was no agreement between the Petitioner and Respondent No.1 regarding the date of delivery but a mere communication about a tentative date.

4. Learned counsel for the Petitioner next contended that under the Act a consumer can file a complaint within thirty days from the date of cause of action but in the instant case complaint was filed after a lapse of 51 days and under the law for seeking condonation of delay the Respondent No.1 has to explain each day's delay.

5. Conversely, Respondent No.1, a practicing lawyer, submitted that under the Act a final order passed by the trial Court could be challenged through an Appeal in terms of Section 34 of the Act and not the interlocutory orders passed under the Act. Per counsel since the legislatures have intentionally did not provide any remedy against the interlocutory orders, the Petitions under the Extra-Constitutional Jurisdiction of this Court cannot be entertained.

6. We have considered the contention of the learned counsel and minutely perused the orders impugned in these proceedings. No doubt a notice under Section 29(1)(3) of the Act is a mandatory requirement for entertaining a claim filed by the consumer. However, as regards the submissions of the learned counsel that the notice served upon the Petitioner did not contain the grievance as agitated in the complaint, the same requires thorough probe and recording of evidence while under the Constitutional Jurisdiction of this Court such exercise cannot be undertaken, rather the proper forum for such determination is the trial Court. With reference to the condonation of delay in submitting the claim before the trial Court is concerned, Section 29(4) of the Act provides that:

“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 service.”

Bare perusal of the aforesaid provision of law clearly stipulates that the Consumer Court, having jurisdiction in the matter, may entertain a claim to be filed after thirty days if it is satisfied that there was sufficient cause for not submitting the complaint within the specified period. In the instant case, perusal of the record shows, that the Respondent No.1 has annexed certain documents in support of his Application under Section 29(4) of the Act, which was considered and allowed after hearing vide order impugned herein. Moreover, the submission of the learned counsel for the Respondent No.1 that the Act provides right of Appeal against a final order and not against interlocutory orders carries weight and we subscribe to it as well.

For the foregoing reasons, we do not find any substance in the captioned petitions and leave all the issues agitated to be looked into by the Appellate Court upon the final outcome of the proceedings, uninfluenced by any observation made herein, the Petitions are dismissed accordingly alongwith pending misc. applications.

Chief Justice

Judge