IN THE COURT OF CIVIL JUDGE & JUDICIAL MAGISTRATE / CONSUMER PROTECTION COURT KARACHI (SOUTH).

(Before: Mukesh Kumar)

In Claim No. 02/2021

Gerry`s DNATA (Pvt.) Limited,
A company incorporated under laws of Pakistan,
Through its authorized officer Asif Ayub,
Office at level # 5,
Jinnah International Airport, Karachi. ..... Complainant/Claimant.

Versus

M/s Eventualle,
Through its CEO Ms. Zoya Altaf,
[redacted]
..... Defendant.

Mr. [redacted] learned counsel for complainant / claimant.
Mr. [redacted] Amjad Ali Shar, learned counsel for defendant.

ORDER:-

22/04/2021.

1. This common order shall dispose of two separate applications, one filed by complainant for condonation of delay in filing of the main claim under section 29 (4) of Sindh Consumer Protection Act, 2014 "hereinafter referred as **SCPA 2014**", while other submitted by defendant under Order VII Rule 11 The code of Civil Procedure, 1908 "hereinafter referred as **CPC**" on the ground that the claim is barred by law.

2. Notice of these applications were extended each of the counsel and they have duly submitted their respective counter affidavits to the applications.

3. Brief facts of the instant claim are that complainant, being a registered company having 1500 employees and 54 offices nationwide, hired services of the defendant`s company, an even planning company, on 19th February 2020 for arranging end to end management of the annual dinner for about 1200 person scheduled on 25th February 2020. It is submitted that the event turned out to be memorable for all the wrong reasons as no proper arrangements were made. There was neither audio video representation nor SMD performed as committed by defendant. It is further submitted that no proper menu, as decided, was served. The defendant provided faulty and defective services by not arranging the event as communicated and decided by the claimant, hence this claim.

4. Learned counsel for claimant contended in his application as well as orally that cause of action arose on 19.02.2020 when the services of defendant were hired, however due to COVID-19 Pandemic, the entire work of complainant came to standstill; that as soon as the conditions of COVID-19 improved, this claim was filed; that claimant

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informed the defendant about its sub-standard services. Learned counsel lastly submitted that correspondence was in line with the defendant regarding the faulty service, hence this application.

5. Conversely, learned counsel for defendant argued that per se section 29 (4) of SCPA 2014 a claim shall be filed within thirty days of arising of the cause of action; that cause of action purportedly arose on 19.02.2020 and claim is filed after a very considerable delay on 09.01.2021; that lockdown was imposed by the Government of Sindh in the end of March 2020, whereas the work of Civil Courts remained suspended till August 2020; that there is huge delay in approaching this Court; that complainant, with malafide intention, stopped the remaining payment of defendant and on demand of such remaining payment, this dodgy claim has been filed. He lastly maintained that claim be dismissed in *limine* with exemplary costs and submitted case laws 2019 CLC 580 and 2018 CLD 1064 in his favour.

6. I have heard the learned counsel for the parties at some length and have gone through the relevant record appended with these applications.

7. I find it appropriate to reproduce the relevant sub-section 4 of section 29 of the SCPA 2014 which is as follows;

> **29 (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 service.

8. It is clearly mentioned in the first proviso of above mentioned sub-section that the Consumer Court, having jurisdiction to hear the claim, can entertain a claim filed beyond thirty days, if sufficient cause is shown. Perusal of record apparently reveals that the claimant hired services of defendant on 19.02.2020 to arrange the annual dinner scheduled on 25.02.2020, whereon, per se claimant, defendant provided sub-standard and faulty services. It further reveals from the documents annexed with the main claim that few emails were exchanged regarding the event of annual dinner and the last correspondence was made via email on 4th August 2020 by Zoya Altaf (defendant's side) to one Syed Haris Raza (complainant side) for resolving the issues through table talk. A further email conversation dated:05.08.2020 is also annexed with, however the same appears to be an exchange between the employees of complainant's company. Thereafter,

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claimant issued legal notice to defendant on 02.12.2020 which was, per se report, duly delivered on 03.12.2020, however the same was not replied.

9. Learned advocate for complainant utterly argued that the claim could not be filed due to COVID-19 Pandemic, while defendant has strongly contended that no sufficient reason has been extended for not filing the claim within the statutory time frame of thirty days of arising out of cause of action. Indeed, the term **Cause of action** cannot be limited to a restrictive meaning as it may be defined generally as group of facts giving rise to one or more basis for suing or to obtain a remedy in court from another person. Whereas, the facts of the case prima facie shows cause of action arose on 25.02.2020 when the alleged faulty and defective service was provided by the defendant. Admittedly at that time a pandemic known as Corona Virus Induced Disease 2019 **"COVID-19"** got emerged and a kind of havoc arose which undoubtedly put the normal life at standstill and resultantly The Honorable High Court of Sindh issued directions vide its circular no.RHC/CIRCULAR/2020 dated:22.03.2020 for suspending the entire judicial work except urgent matters and bail matters onwards 24.03.20 till further orders and the same remained in field till 02.08.2020 as per another circular no.RHC/PA/CIR/2020 dated: 25.07.2020. The Honorable High Court of Sindh also issued notifications dated: 28.03.2020 & 15.04.2020 wherein it was notified that the Districts Courts shall be deemed to be closed from 22.03.2020 till 30.04.2020.

10. Undeniably, there was chaotic position and such situation of pandemic was unprecedented in the modern world's history. Nevertheless, email conversation also took place between the parties till 04.08.2020, however there appears no further sufficient reason so adduced by the complainant for not approaching the court. Concededly, the complainant remained mum for about 120 days and then suddenly after a substantial delay of four months i.e. on 02.12.2020 served a legal notice to defendant. The learned counsel for complainant was asked about the reasons of such delay to which he candidly replied that they had not available sufficient staff at that time. I do not find such reasons to be justifiable as it is well settled principle that one, who is impending to court, has to account for each day while explaining the reasons of delay.

11. I take my guidance from case law titled as **Al-Ghazi Tractor Limited through Manager and 2 others Vs. Peer Muhammad Ali** reported as **(2019 CLC 580)** wherein Honorable Lahore High Court has held that, "it is the bounden duty of a Court to adjudge a proceeding placed before it on the touchstone of limitation at very initial stage." It is further held in the dictum laid down as **Muhammad Riaz Vs. Mian Aamir Rasheed and others** reported as **(2016 CLC Note 122)** wherefrom the relevant part is hereby reproduced for due diligence;

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Period of limitation prescribed for filing a complaint (before Consumer Court) is 30 days from the date of arising of cause of action. Although delay of up to sixty days in filing the complaint can be condoned by the Consumer Court yet it is subject to sufficient cause'. Without offering plausible reasons, the delay cannot be condoned by the Consumer Court

12. In a recent judgment of Honorable High Court of Lahore (**Ms. Deltex Courier service Vs. Sajid Imran Gill and others**) reported as **2019 CLC 1041**, it was illustratively articulated that the accrual of cause of action cannot be restricted to a date when some wrong is done with the complainant / consumer or it comes in his knowledge and the computation of time period to file a claim shall commence when there is refusal to redress the grievance.

13. It appears so well from the available record that the last email dated: 04.08.2020, for redressal of grievance, was rather sent by the defendant and not by the complainant and no further correspondence was made in the forthcoming time or any kind of recurring cause of action was in field till December 2020. At the most, complainant could have approached the court in the end of August, 2020 as normal course of civil work in courts commenced regularly from 03.08.2020. Therefore, taking the above facts and circumstances into consideration, I find that there is no sufficient cause for the claimant to not file the claim within the prescribed limitation.

14. In view of the above discussion, application under section 29 (4) SCPA 2014 filed by claimant is hereby dismissed, whereas, application under Order VII Rule 11 submitted by defendant is allowed on the score that the claim, on the face of it, is badly hit by the limitation. Consequently, the claim in hand is accordingly dismissed with no orders as to costs.

Announced in open Court.
Given under my hand and seal of the court, this 22th day of April, 2021.

(MUKESH KUMAR)
Civil Judge & Judicial Magistrate /
Consumer Protection Court Karachi (South)

Civil Judge & Judicial Magistrate
Consumer Protection Court

Date of Application 24.04.21
Fees Estimated on 28.04.21
Copy Diposited on 04.05.21
Fees Ready on 04.05.21
Stamp Supplied on 04.05.21
Copy Certified on 04.05.21
Copy Delivered on 04.05.21
Copying Charges Rs.
Paper Charges Rs. 12
Compare Charges
Paper Charges
Compared By Prepared By
CERTIFIED TO BE TRUE COPY
04/05/2021

Civil Judge & Judicial Magistrate
Consumer Protection Court
South

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