

مدد علی الرحمان نیل جیٹائی لیب

26-03-19 کوئل فرقی قانو
کوئل فرقی قانو

محبت قابل سماعت استقارہ کے لئے مدعی عدلیت کی استرعا کوٹنا
لینڈا جب استرعا ملوی ہو کر ریزر 29-04-19 پیرائے محبت قابل
سماعت چھٹی ہو۔

Qamar Ijaz

District Sessions Judge
Presiding Officer District
Consumer Court LHR

29-04-19 کوئل فرقی قانو

محبت قابل سماعت استقارہ کے لئے مدعی عدلیت کی استرعا
کوٹنا جب استرعا ملوی ہو کر ریزر 19-06-19 پیرائے محبت
قابل سماعت چھٹی ہو۔

Qamar Ijaz

District Sessions Judge
Presiding Officer District
Consumer Court LHR

19-06-19

Present

Learned counsel for the parties

Arguments regarding maintainability of complaint heard.

Record Perused.

ORDER.

Learned counsel for the defendant while referring to provisions of Section 29 of Punjab HealthCare Commission Act 2010 and case law reported as 2017 CLC 1150 and 2017 Cr.L.J Note 192 has contended that this court lacks jurisdiction to entertain the claim as such complaint be returned for its presentation before the competent forum in accordance with law.

2. The Learned counsel for the complainant has opposed this application and while referring to case law reported as PLD 2010 Lahore 214, PLD 2015 Islamabad 81 and PLD 2018 Islamabad 372, it is contended that this Court has jurisdiction to try the instant complaint and although complainant has option to file a complaint before Punjab HealthCare Commission but for recovery of damages he has no other forum available.

3. Briefly stated facts of the case are that complainant on alleges that he got fever on 13-06-2018 and went for its treatment. The physicians also prescribed complete blood examination test and for this purpose he approached the lab /defendant No. 1 and after payment of prescribed fees of Rs. 2700/- obtained report dated 14-02-2018. When complainant received his report he was petrified and disturbed. His physician advised second check up in order to confirm the report of the defendant lab and he got second report on 17-06-2018 from the defendant No. 1 which was different from the previous report. This shows professional negligence on the part of defendant in preparation of its report dated 14-06-18. This caused mental shock, anxiety and depression to the complainant who also lost his service due to this condition. After serving legal notice to the defendants, he filed instant complaint. Defendants submitted written statement and raised multiple legal/factual objections regarding the maintainability of the complaint and also sought dismissal of the complaint being not maintainable before this Court.

4. It may be relevant here that this court is established under Punjab Consumer Protection Act 2005 and the provisions of Islamabad Consumer Protection Act (111 of 1995) are not applicable to the proceedings of this Court. Furthermore in Punjab, the provisions of the Punjab Healthcare Commission Act 2010 are made applicable which is not applicable in Islamabad territory. It may also be noted that case law reported as PLD 2010 Lahore 214 was announced on 18-02-2009 while the Punjab Healthcare Commission Act 2010 containing Section 29 was made applicable on 2nd August 2010. As such the case law referred by learned counsel for the complainant is not helpful to the cause of complainant

5. Under Section 2 (c) of Punjab Consumer Protection Act 2005, if relationship of consumer and service provider is established and there is allegations of any fault in services provided, this court is competent to entertain a complaint filed under S. 25 of the same Act for grant of damages. The standard of provision of services is explained in Sec. 14 of the said Act.

6. The Punjab Health Care Commission Act 2010, came into force on 2nd August 2010 and its Section 29 is as follows:-

"S.29 Immunity- No suit, prosecution or other legal proceedings related to provision of health care services shall lie against a health care service provider

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7. Section 2 of the said Act provides definition of certain terms used in the said Act, some of which are as under.

- [xv] "Healthcare Establishment" means a hospital, a diagnostic center, medical clinics, nursing home, maternity home, dental clinic, homoeopathic clinic, Tibb clinic, Acupuncture, Physiotherapy clinic or any other premises or conveyance.
- (a) wholly or partially used for providing healthcare services, and
 - (b) declared by the government by order published in the official Gazette as a healthcare establishment.
- (xvi) "Healthcare Services" means services provided for diagnosis, treatment or care of person suffering from any physical and mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other services notified by the Government.
- (xvii) "Healthcare Service Provider" means an owner, manager or in-charge of a healthcare establishment and includes a person registered by the medical and dental council, council for Tibb, council for Homeopathy or nursing council.
- (xxii) "Medical Negligence" means a case where a patient sustains injury or dies as result of improper treatment in a Health Care Establishment and in case of death determined on the basis of Medical Autopsy report.

8. ✓ Section 19 of the Act 2010 reads as under:-

"Medical Negligence -(1) subject to sub- section (2), a healthcare service provider may be held guilty of medical negligence on one of the following two findings-

- (a) the healthcare establishment does not have the requisite human resource and equipments which it professes to have possessed: or
- (b) he or any of his employee did not, in the given case, exercise with reasonable competence the skill which he or his employee did possess.

9. Under Section 3 of the Punjab Healthcare commission 2010, a healthcare is established and the functions and powers of said commission are given in Section 4 of the said Act which included

(2) (e)-----

To enquire and investigate into maladministration, malpractice and failure in the provision of healthcare services and issue consequential advice and orders.

(7) Notwithstanding anything contained in any other law, the commission may.

- (a) on a complaint by any aggrieved person ; or
- (b) on a complaint by any aggrieved Health Care Service provider;

shall undertake investigation into allegations of maladministration, malpractice or failures on the part of a Health Care Service provider or any employee of the Health Care Service Provider.

- (8) The commission shall take cognizance of any case of harassment of a healthcare service provider or damages to a healthcare establishment and may refer such a case to the relevant forum.

10. Under Sec.23, procedure for investigation and in Sec. 28, the jurisdiction of the Commission for adjudication of fine is defined.

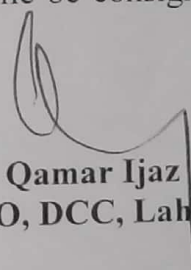
11. The contention of the learned counsel for the complainant is that although remedy before Health Care Commission is also available to the complainant under Punjab Healthcare Commission Act, however, he can not be denied his right to avail his remedy before this forum against the defendant who has provided faulty services and Section 29 of Punjab Healthcare Commission Act 2010, does not bar jurisdiction of this Court to entertain the claim adding that this Court functions under Punjab Consumer Protection Act 2005 and Section 29 of Punjab Healthcare Commission Act 2010 is not applicable to its proceedings. It is further contended that there is no bar against simultaneous proceedings at different forums.

12. The Punjab Consumer Protection Act is a general law and definition of service provider given in it is general in nature. Its Sec. 3 states that provisions of this Act shall be in addition to and not in derogation of the provisions of the any law for the time being in force. While the Punjab Health Care Commission Act 2010, is a special law, which deals with the Health Care Services, provided by a Health Care Establishment/Service Provider and its Section. 29 exclude any prosecution/legal proceedings relating to provision of Healthcare Services against a Health Care Service Provider before any other forum except under the said Act. It has been held in 2015 CLD Lahore 196 that where a specific remedy is available under a special law, general law cannot be resorted to. While deciding a matter under Punjab Health Care Commission Act 2010, reported in 2017 CLC 1150, Lahore [Multan Bench] Para 17, 2017 P Cr.L J Note 192 it has been held by the Hon'ble Lahore High Court Lahore that according to Section 23[2] of the Act, the aggrieved person has statutory right to submit

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application before the Commission WHICH IS THE ONLY FORUM to determine the negligence of service provider, if any, after enactment of the Act. Keeping in view the above stated facts/law, it is held that the act of defendants, to provide medical test report to the complainant/aggrieved person falls within the definition of "Healthcare Services" and the status of the defendant is that of "Healthcare Service Provider" and the complainant is an aggrieved person. The Section 29 of the Punjab Healthcare Commission Act 2010, bars jurisdiction of this court to take cognizance of the matter, so complaint before this Court is not proceedable. Accordingly, while maintaining the objection of the defendants, instant complaint is ordered to be returned for its presentation before competent forum in-accordance with law with no order as to costs of the proceedings. File be consigned to the record room after its due completion.

Announced
19-06-19


Qamar Ijaz
P/O, DCC, Lahore