

**IN THE COURT OF PERVEZ IQBAL SIPRA,
DISTRICT & SESSIONS JUDGE / PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
FAISALABAD.**

Complaint No 1357/2010
Date of institution 25.02.2010
Date of decision 24.05.2017.

Asia W/o Muhammad Yousaf R/o Chak No.81 JB Pindiwari,
Faisalabad.

Versus

1. Dr. Rashida Asim, MBBS, Gynae Hospital Chak No.73 JB Japaal,
Faisalabad.
2. Dr. Muhammad Asif Latif MBBS, Gynae Hospital Chak No.73 JB
Japaal, Faisalabad.
3. Abdul Khaliq Dispenser, Gynae Hospital Chak No.73 JB Japaal,
Faisalabad.
4. Peer Mazhar Hussain Mehgani Sharif Jhang proprietor Gynae
Hospital Chak No.73 JB Japaal, Faisalabad.

Complaint 25 of the Punjab Consumers Protection Act, 2005.

ORDER:

By filing this complaint, the claimant has contended that she was admitted in Gynae Hospital Chak No.73 JB, on 24.06.2007 and on 25.06.2007, her surgery was operated by defendants No.1 to 3 for delivery of child and the Almighty Allah blessed her with two children and she was discharged from the hospital. Lateron, she felt pain and on 15.08.2008 went to the Wali Memorial Hospital and got herself checked from Dr. Muhammad Ishaq. He made ultrasound and reported that a sponge was in her abdomen because of which she was feeling pain. He made surgical operation and took out the sponge and because of the sponge, her one intestine damaged and then again she was subjected to third surgical operation in the Allied Hospital Faisalabad and remained admitted for fifteen days. Her husband moved an application to the Executive Officer Health, Faisalabad

upon which he held an inquiry and the defendants were found guilty. Because of faulty services of the defendants, she suffered financial loss, mental agony and physical torture for which her compensation may be Rs.13,45,000/-. He gave notice u/s 28 (1) of the Punjab Consumers Protection Act, 2005, to the defendants but no reply, hence, the instant complaint.

2. The defendants contested the complaint by filing written statement. They have denied from the version of the claimant and taken plea that there was no willful negligence on their behalf and the sponge remained in abdomen because of a human error which can occur at any hospital or in any expert hand. They also raised some legal objection regarding cause of action, limitation, mis-joinder and non-joinder of necessary parties and malafide of the claimant in filing this complaint.

3. At pre-trial stage, none of the parties offered for settlement and then both the parties were asked to produce their evidence. The oral as well as documentary evidence of the parties has been collected / recorded.

4. Arguments heard, record perused.

5. Without going in the deep merits of the case, the question of limitation needs determination at the first. Under Section 28 (4) of the Punjab Consumers Protection Act, 2005, a claim shall be filed within thirty days of the arising of the cause of action. The sponge was left in the abdomen when the surgical operation of the claimant was conducted on 25.06.2007. It was the day, when the claimant

accrued the cause of action, however, she came to know about this fact that the sponge was in her abdomen on 15.05.2008 and her second surgical operation was conducted. When she faced surgery for third time in the Allied Hospital Faisalabad, the date has not been mentioned. However, her husband filed an application to the Executive Officer Health, Faisalabad and upon his application, an inquiry was conducted. The inquiry was finalized on 27.01.2009. When the claimant came to know that a sponge was left in her abdomen and thereby the services rendered by the defendants were faulty, was the day she accrued the cause of action and the limitation for filing the complaint started there from. She filed the complaint on 25.02.2010 and as such it was filed after about one year and nine months of the accruing of the cause of action. If it is deemed that the claimant accrued the cause of action on the day the result of inquiry got conducted by the Executive Officer Health, Faisalabad at the application of her husband, come on, it was the date 27.01.2009, and after about one year and one month of this day, the complaint was filed. If the period of limitation is reckoned from 27.01.2009, the complaint is also time barred. No application u/s 28 (4) of the Punjab Consumers Protection Act, 2005, has been filed for extension of time and the court itself is not empowered to extend time for filing the claim. Even otherwise, u/s 28 (4) of the Punjab Consumers Protection Act, 2005, the court is not empowered to extend the time beyond the period of one year + sixty days from the date of providing services. The alleged faulty services were rendered on 25.06.2007 and if the

time is deemed extended, the complaint also will be time barred. By any stretch of imagination, the complaint in hand may not be deemed within time. No sufficient cause also has been shown by the claimant for filing the claim with delay. During the course of arguments, the learned counsel for the claimant took plea that the claimant was ill, therefore, the complaint could not be filed within time. Such plea was not taken in the complaint and even the attorney of the claimant while appearing in the witness box as PW1 also stated nothing in this respect. No one may be allowed to go beyond the pleadings. If the plea of the learned counsel of the claimant is accepted and the illness of claimant is deemed a sufficient cause and the time is extended as provided under Section 28 (4) of the Punjab Consumers Protection Act, 2005, the complaint then also is time barred as the alleged faulty services were rendered on 25.06.2007 and the time may be extended up to 24.08.2008.

6. The learned counsel for the claimant has drawn the attention of this court to the order dated 25.02.2010 of this court, by saying that the question of limitation was determined by the court. The order dated 25.02.2010 has been perused very carefully and it does not go in favour of the claimant. The complaint was prima facie entertained as maintainable and no conclusive findings were given regarding limitation. The order dated 25.02.2010 is reproduced hereunder:-

“The claim is prima facie, maintainable in pursuance of the report of the learned Registrar and as per contents of the claim as it is also within the

prescribed time limit. The claim is maintainable in the first glance also as there is neither existing system of redress nor the regulatory system for individual claims”.

My learned predecessor prima facie observed that the claim was maintainable and as per contents of the complaint, it was within prescribed time limit. Such observation of my learned predecessor was not a conclusive finding. The defendants while submitting written statement raised objections regarding limitation and jurisdiction. My learned predecessor heard arguments of both the sides and vide order dated 13.07.2011 observed that the objections being mixed questions of fact and law required evidence for determination and putting the findings on such objections pending, the parties were put to trial. In the circumstances, the order dated 25.02.2010 may not be deemed a finding regarding limitation and it also does not bring the claim within time. The claimant must have to produce evidence to prove the question in affirmative but no evidence has been brought on file at all. Hence, nothing seems to have been proved by the claimant in respect to the question of limitation and any justification for extension of time. So, the plea of the learned counsel carries no weight, hence, is refuted. It also has been argued that in the complaint in hand, the proceedings have been carried out for the last seven years and at the stage, the claimant may not be ousted from the court just on basis of limitation. The point of limitation is a question of law and the pendency of this complaint for a long time may not be deemed a reason for ignoring the law of limitation. Vide order dated 13.07.2011,

the question of limitation was put pending for determination and the parties were put to trial. The sense of this order was that after recording the evidence of the parties, the findings in the respect thereto would be given. Now it is the stage to give findings regarding limitation after going through the evidence as the trial is complete.

7. For what has been discussed above, it is held that the complaint in hand is time barred and no findings are required to be given on merits. It is a well settled principle of law that the question of limitation is to be considered first before the matter is decided on merits. If the claimant's stance regarding compensation is discussed and it proves in affirmative, it will be fruitless because the claim being time barred may not be accepted. Hence, the complaint in hand being time barred is dismissed. However, the claimant may avail any other remedy available to her under law, if so advised. After due completion, the file be consigned to the record room.

Announced
24.05.2017

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad

Certified that this order consists of six pages and each page has been dictated, read, corrected and signed by me.

Dated
24.05.2017

Presiding Officer,
District Consumer Court, Faisalabad.

Short Order**Present:-**

Nemo.

ORDER

Vide order dated even passed in English separately, the complaint is dismissed. After due completion, the file be consigned to the record room.

Announced
24.05.2017

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.