

BEFORE THE HONOURABLE DISTRICT & SESSIONS JUDGE
PRESIDING OFFICER DISTRICTS CONSUMER COURT LAHORE,
SHEIKHUPURA, NANKANA SAHIB & KASUR.

خليل الدين بن حفص بن ليث

Check list/Proforma for filing the case before,

District Consumer Court, Lahore.

Complaint No. 266/19

1. Photocopy of ID card of consumer. X
2. Complaint duly attested/verified. X
3. Affidavit if any. ✓
4. Legal notice copy dated. 19-04-19 ✓
5. Reply of legal notice, if any X
6. Postal, Courier receipt of legal notice. (copy) ✓
7. Purchased receipt of product, services ✓
8. Application of condonation of delay if any. ✓
9. Nature of claim Defective product, faulty service ✓
10. Whether Consumer Court has the territorial Jurisdiction to entertain the complaint, claim. ✓



Registrar
District Consumer Court,
Lahore.
07-05-19

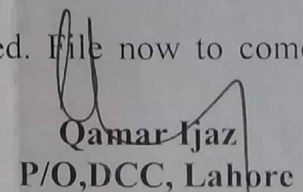
07-05-19

Present: Counsel of the Complainant.

Fresh complaint be registered. File now to come
up on 08.05.19 for Preliminary arguments.

Announced

07-05-19


Qamar Ijaz
P/O, DCC, Lahore

Mr. Shahid Usman Advocate learned counsel for the complainant
Preliminary arguments heard. Record Perused.

Mr. Khalil Ud Din, has filed instant complaint alleging therein that defendant Chughtai Lab on 13-10-2018, issued test report, whereby the complainant was diagnosed Hepatitis C positive which was never diagnosed in complainant's previous test reports, from different labs in Lahore. That report brought worries to the complainant, who went through medical treatment costing him Rs. 4,00,000/-. His business also suffered. Later on complainant got test report from another lab which shows Hepatitis non-active. The complainant approached the defendant lab for compensation that promised but then refused on 18-04-2019. He served legal notice and then filed instant complaint.

2. This court functions under the Punjab Consumer Protection Act 2005 and under its Section 2 (c), 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.

3. 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 except under this Act”.

4. 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

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Khalil Ud Din Vs Chughtai Lab

- (xvii) mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but
- (xviii) are not provided in connection with a medical condition and includes any other services notified by the Government.
- (xix) "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.

5. 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.

6. 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

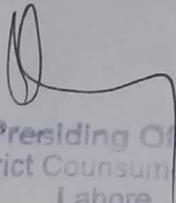
Service provider;

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.

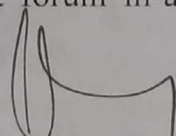
7. Under S. 23, procedure for investigation and in S. 28, the jurisdiction of the Commission for adjudication of fine is defined.


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8. The contention of the learned counsel for the complainant that that Section 29 of Punjab Healthcare Commission Act 2010, does not bar jurisdiction of this Court to entertain the claim has no force.

9. 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 excludes 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, 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 application before the Commission WHICH IS THE ONLY FORUM to determine the doctor's negligence, if any, after enactment of the Act. Keeping in view the above stated facts/law, it is held that the act of defendant lab, to issue medical test report to the complainant/aggrieved person on 13-10-2018 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, the 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.

Announced
08-05-19


Qamar Ijaz
P/O, DCC, Lahore