

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Crl. Appeal No.176/2017.

Shifa International Hospitals Ltd., etc Vs. Mst. Hajira Bibi, etc.

Appellants by: Mr. Zaheer Bashir Ansari,
Advocate.

Respondent No.1 by: Ch. Abdur Rehman Nasir,
Advocate.

Date of Decision: 20.04.2018.

MOHSIN AKHTAR KAYANI, J:- The instant appeal has been preferred against the order dated 12.09.2017, passed by learned Additional Sessions Judge-VII (West) Islamabad, whereby objection raised by the appellants regarding maintainability of consumer complaint filed by respondent No.1 was dismissed.

2. Brief facts referred in the instant appeal are that respondent No.1 filed a complaint U/S 8, 8-A & 0 of the Consumers Protection Act, 1995 against the appellants before the Court of Additional Sessions Judge/Consumer Court, Islamabad with the allegations that she availed medical services of Shifa International Hospital Limited/appellant No.1 and other medical officers/other appellants for her treatment in the month of November, 2012 up till May, 2015 vide registration MR No.72-01-6C. Respondent No.1 continuously visited the hospital and consulted various doctors including appellants No.2 to 5 and all the doctors extorted money but could not diagnose the real disease and she has been misled under deceptive misrepresentation and as a result of the same, she has finally taken different medicines as per their advices and later on when she contacted and consulted the doctor of Kulsum International Hospital Blue Area Islamabad, she has been referred to Leprosy Hospital Rawalpindi, where her disease was detected and she has been given proper treatment and medical care. Respondent No.1 filed the complaint by claiming doctors' fee, monetary loss, expenditures on visits, mental torture, physical and health loss and family disturbance.

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3. The appellants challenged maintainability of the complaint by raising objection at initial stage mainly on the ground that case of respondent No.2 can only be dealt by Disciplinary Committee of PMDC U/S 19 & 30 of Pakistan Registration of Medical and Dental Practitioner Regulation 2008. Learned Consumer Court after hearing learned counsel for the parties dismissed the objection vide impugned order dated 12.09.2017 and proceeded with the complaint.

4. Learned counsel for the appellants has contended that Islamabad Consumer Protection Act 1995 is general law and PMDC Ordinance 1962 is special law, which covers the cases of medical negligence as such complaint can only be determined by technical experts; that when there is conflict in two special laws, the law which contains over riding clause shall prevail and PMDC Ordinance, 1962 contains over riding clause; that section 31(4) of PMDC Ordinance, 1962 provides concept of Disciplinary Committee, unless the said committee gives its findings, no other case can proceed; that learned Consumer Court misapplied the law and the consumer complaint is not maintainable.

5. Conversely, learned counsel for respondent No.1 has contended that Islamabad Consumer Protection Act 1995 is beneficial legislation dealing with the affairs of consumers and it provides concept of summary trial as well as penalties upon the person responsible for infringement including fine as well as imprisonment, which is not available in PMDC Ordinance, 1962; that PMDC Ordinance, 1962 regulates the affairs of medical practitioners and at the most license of the practitioner can be cancelled, if negligence is proved by the Disciplinary Committee of PMDC, whereas case of respondent No.1 is based upon the claim of damages, expenditures and cost, which cannot be treated under PMDC Ordinance, 1962.

6. I have heard the arguments and gone through the record.

7. From perusal of the record, it has been observed that respondent No.1 filed a complaint before learned Additional Sessions Judge/Consumer Court, Islamabad regarding the medical negligence committed by appellants No.1 to 5 during treatment of three years starting from November, 2012 to May, 2015, when respondent No.1 was registered vide registration MR No.72-01-6C and during the

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said period, she has been treated in Shifa International Hospital Limited by appellants No.2 to 5 on different pretexts and diseases, even all kinds of tests were conducted by creating impression that respondent No.1 is TB patient and continued treatment for 2 to 3 years, respondent No.1 approached other hospital and finally she has been referred to Leprosy Rawalpindi, where the disease of respondent No.1 was detected and she was treated properly, which resulted into recovery, however, as per claim of respondent No.1 in the complaint, she has suffered huge financial loss in the shape of payment of professional fee to appellants No.1 to 5, her visits, mental torture, health loss and family disturbance and she claimed Rs.1,55,00,000/-.

8. The appellants have challenged the question of maintainability of the complaint mainly on the ground that the appellants are governed under PMDC Ordinance, 1962, whereby Disciplinary Committee has been provided to deal with such kind of situation, however, learned Consumer Court dismissed their objection vide impugned order dated 12.09.2017.

9. I have gone through the term consumer described in Islamabad Consumers Protection Act, 1995, which covers all kinds of persons, who buy goods for consideration as well as services, even the concept of unfair trade practice has been explained in detailed manner, whereas PMDC Ordinance, 1962 provides the concept of professional negligence in terms of section 31 of the Ordinance, which can only be dealt by Disciplinary Committee of PMDC and the ordinance further contains the provisions of section 36-A, which has over riding effect over any other law but the important question before this Court has to see whether PMDC Ordinance, 1962 provides the concept of damages and compensation, the answer is in negative, even PMDC Ordinance 1962 deals with registration of medical practitioners and dentists and to provide or to establish uniform minimum standard of basic and higher qualification in medicine and dentistry but the entire ordinance as well as other regulations placed before this Court reflects that the doctors can only be proceeded against for medical negligence, which may lead to removal of their names from the register of practitioners, which is not the mandate of The Islamabad Consumers Protection Act, 1995 as the same being special law provides the concept of unfair trade practice and if the consumer's rights have been

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infringed, the offender may also be tried summarily U/S 8-A and similarly section 9 of the Act provides different kinds of penalties, which include imprisonment, which may extend to two years or with fine with maximum limit of Rs.40,000/- and section 9(3) of the Act empowers the authority to pass order of compensation to the consumer to the extent the consumer has suffered any damage or loss through unfair trade practice, where it deems appropriate, which is lacking in the case of PMDC Ordinance, 1962. In such like situation where the consumer under The Islamabad Consumers Protection Act, 1995 availed the medical services after paying the consideration falls within definition of “consumer” as defined in section 2(c) of the Act and the “services” provided by the appellants fall within definition of section 2(e) of the Act and in such like circumstances the complaint is maintainable. Reliance is placed upon *PLD 2010 Lahore 214 (Dr. Shamshad Hussain Syed vs. District Consumer Court, Lahore)*.

10. Even otherwise, The Islamabad Consumers Protection Act, 1995 was enacted to promote and protect interest of the consumers and was passed to protect the society and individuals from exploitation. Therefore, such like enactments must be given purposive interpretation keeping in view the basic intent of the statute and without transgressing its objects and scope. *Reliance is placed upon PLD 2015 Islamabad (Muhammad Farooq Khan vs. Excel-Labs and another)*.

11. Even otherwise, when two special laws are in conflict, the general principle of interpretation of a statute is that the special law shall have precedence over the general law and when two special laws are inconsistent of any provision/situation, then one which is latter in time shall prevail over the earlier one. Reliance is placed upon *2002 P Cr. L J 216 (Muhammad Saleem vs. The State and another)*.

12. Similarly, while interpreting two special laws, the Courts have to see other factors including the object, purpose and policy of both the statutes as well as intention of the legislature in order to determine, which of the two special laws will prevail and applicable. Reliance is placed upon *2017 C L D 1198 (Syed Mushahid Shah and others vs Federal Investment Agency and others)*.

13. In view of above background, this Court comes to the conclusion that when consumer in terms of The Islamabad Consumers Protection Act, 1995 filed

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complaint against any medical practitioner, he has to bring medical expert before the Consumer Court to prove the case of negligence, unfair trade practice of the doctor, in such eventuality the Court can only rely upon the evidence of the expert alongwith other factors, whereas PMDC Laws provide complete mechanism to deal such kind of situation against the medical practitioner, who would be dealt under disciplinary proceedings, even otherwise PMDC Authorities have expert, who after adopting their own procedure of inquiry, if comes to the opinion may cancel the licence of the doctor, who is guilty of medical negligence.

14. The only difference in both special laws i.e. The Islamabad Consumers Protection Act, 1995 and PMDC Ordinance, 1962 as well as PMDC Regulations is of compensation, which could only be given under Consumer Law, whereas PMDC Laws are silent to that extent, therefore, in my humble view, Consumer Court shall entertain the complaint of any consumer, if comes to prima facie view that a case of medical negligence of any doctor comes on record, then the matter will be sent to PMDC Authorities for their opinion with time limitation, whereas PMDC after adopting their own procedure will submit their report to Consumer Court, whereafter complaint under The Islamabad Consumers Protection Act, 1995 shall be processed for the purpose of compensation.

15. Another question raised in these proceedings is the maintainability of this appeal, whereas section 10 of The Islamabad Consumers Protection Act, 1995 deals with the concept of appeal, the same is reproduced as under:-

“10. Appeal. - An appeal against the order of Authority shall lie to the High Court and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeals to the High Courts shall, mutatis mutandis, apply”.

The above referred provision only focus the appeals to High Court, which means sections 410 and 417, Cr.P.C were applicable, the same are as under:-

“410. Appeal from sentence of Court of Session. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by

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the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.

(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)''.

In view of above, it is made clear that the forum of appeal against order of Consumer Court is High Court only, which can be considered only in two eventualities i.e. in case of conviction or acquittal in terms of sections 410 and 417 Cr.P.C, which can be equated as if any consumer complaint is allowed or dismissed through final order and in any other eventuality does not fall under this concept.

16. The Islamabad Consumer Protection Act, 1995 is also silent qua the interim or interlocutory orders and appeal U/S 10 of the Act only provides application of Criminal Procedure Code, 1898 to the extent of appeal to High Court as referred above, therefore, it can safely be considered that all interim/interlocutory orders are not appealable as the scheme of The Islamabad Consumers Protection Act, 1995 is based upon summary procedure for early determination of consumer complaint and the true intent of the legislature has to be applied in same manner.

17. While considering the entire concept of appeal in Criminal Procedure Code, this Court is fully convinced that appeal U/S 10 of Islamabad Consumers Protection Act, 1995 is only maintainable against the order of the authority, which is final in its nature after conclusion of the proceedings, especially the procedure U/S 8 for disposal of the complaint deals with examination of complainant and concept of opportunity of being heard describes complete mechanism of determination of real issue, whereas prior to the said procedure every order is to be considered interlocutory, which cannot be challenged in appeal, otherwise the very mandate and intention of the legislature would stand frustrated. Even otherwise, Islamabad Consumers Protection Act, 1995 does not provide any revisional powers to the High Court, which could cover such kind of eventuality and when the legislature has not

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provided such provision to cover interim orders, then the intent has to be applied in strict manner.

18. For what has been discussed above, instant appeal is not maintainable, therefore, the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

APPROVED FOR REPORTING.

R.Anjam

JUDGE

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