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01.7.2021

11/7/2021

Petitioner

IN THE HIGH COURT OF SINDH AT KARACHI
CP-S No. 4231 of 2021

Dr Pervez Mahmood Hashmi
son of Khurshid Ahmed
Muslim, adult, having place of business at
the Aga Khan University Hospital,
Stadium Road, Karachi

Versus

1. The Sindh Healthcare Commission
through its Chief Executive Officer,
Having office at the 2nd Floor, Block-C,
FTC Building, Shakra-e-Faisal, Karachi

2. The Sindh Healthcare Commission
through its Director Complaints,
Having office at the 2nd Floor, Block-C,
FTC Building, Shakra-e-Faisal, Karachi

3. Sufyan Javed
son of Muhammad Javed Akhtar
Muslim, adult,
having address at House No.222-B,
Block-2, PECHS, Karachi

4. Tahera Javed
wife of Muhammad Javed Akhtar
Muslim, adult,
having address at House No.222-B,
Block-2, PECHS, Karachi

5. 11th Additional District Judge
Karachi (East), District & Sessions Courts,
Karachi

6. 13th Senior Civil Judge & Rent Controller
Karachi (East), District & Sessions Courts,
Karachi

Respondents

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN

That the Petitioner above named respectfully submits as under:

That being aggrieved and dissatisfied with the Order dated 16.04.2021 passed by the Respondent No.5 in Civil Appeal No.05 of 2020 ('Impugned Order' a certified copy of

ORDER SHEET

DATE	ORDERS WITH SIGNATURE OF JUDGE(S)
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CP No.D-4231 of 2021

Priority

1. For orders on office objection
2. For orders on CMA No.17310/2021 (exemption)
3. For hearing of CMA No.17311/2021 (stay)
4. For hearing of CMA No.17312/2021 (S 151 CPC)
5. For hearing of main case
(Statement filed on behalf of Respondent No.1 and 2.)

25.01.2024

Mr. Hasan Arif, Advocate for petitioner
 M/s Muhammad Tariq and Munawar Ahmed, Advocates for Respondents
 No.1 and 2
 Mr. Saifullah, AAG

It is to be noted that through these proceedings the Petitioner has impugned an order dated 16.04.2021 passed by the learned XI Additional District Judge, Karachi East, dismissing the Civil Appeal No.05 of 2020, preferred against the Order dated 03.07.2020 rendered by the Sindh Healthcare Commission (SHCC), imposing a fine of Rs.100,000.00 upon him on the Complaint No.48 of 2019, filed by the Respondent No.3.

Briefly facts of the case are that Mrs. Tahira Javed (**Patient**), mother of the Respondent No.3, sustained an injury in her right shoulder in May, 2016 in Saudi Arabia and in late 2017 was examined by Dr. Pervaiz Hashmi, Petitioner herein, at the Aga Khan Hospital. On the opinions of the Petitioner the patient was operated twice but to no avail. Consequently, the Respondent No.3 alongwith the Patient travelled to the United Kingdom and upon recommendation of an Orthopedic Surgeon was successfully operated. In April, 2019, the Respondent No.3 filed a complaint against the Petitioner, inter-alia, for negligence etc, before the SHCC, which

recommended imposition of a fine of Rs.100,000.00 upon the Petitioner, who preferred an Appeal bearing No.05 of 2020 but the same was dismissed by the Respondent No.5 vide order impugned herein.

Learned counsel for the Petitioner contends that the impugned order is ~~is~~ unsustainable in law as the Appellate Court erred in observing that while Petitioner's representation in terms of Rule 50 of the Commission Regulations, 2017, is pending therefore the Appeal is not maintainable. He submitted that as in terms of Section 31(1)(e) of the Sindh Healthcare Commission Act, 2013, the District and Sessions Judge is competent to hear and decide an Appeal against the imposition of fine, imposed by the Commission, the matter may be remanded for deciding it afresh after giving full opportunity of hearing to the parties.

The learned counsel appearing for Respondents No.1 and 2 and the learned AAG conceded to the above legal position and have no objection.

We have heard the learned counsel for the Petitioner, Respondents No.1 and 2 as well as the learned AAG and perused the material available on record. Perusal of the impugned order reveals that the learned Appellate Court though in terms of Section 31(1)(e) of the Act was empowered to decide the subject Appeal, has preferred to dismiss the same on the premise that against the order of the Commission, Petitioner has already filed a Representation before the SHCC in terms of Rule 50 of the Commission Regulations, 2017. For ready reference and convenience Section 31(1)(e) of the Act is reproduced hereunder:-



31(1) A person who is aggrieved by the---

- (a).....
- (b).....
- (c).....
- (d).....
- (e) imposition of fine by the Commission

may, within thirty days from the date of communication of the order of the Commission, prefer an appeal in writing to the District and Sessions Judge."

For the foregoing, while allowing the instant Petition and setting aside the impugned order, we remand the matter to the learned District and Sessions Judge, Karachi East, for deciding the Petitioner's Appeal afresh, preferably within a period of two months from the date of communication of the order. The pending misc. applications stands disposed of accordingly.


Chief Justice


Judge

Naseem