

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 40 of 2021

‘Riaz Ahmed Khan. v. C.E.O of M/s. Agha Khan University Hospital & others’

Appellant : Through Mr. Muhammad Kamran
Iqbal Bhutta, Advocate

Respondent : Through Mr. Ahmed Magsi,
Advocate

Date of Hearing : 28.09.2026
Date of Announcement : 06.10.2026

J U D G M E N T

SAMAN RAFAT IMTIAZ, J.- By this judgement, I intend to dispose of this Miscellaneous Appeal filed by the Appellant [Riaz Ahmed Khan] under Section 34 of the Sindh Consumer Protection Act, 2014 against the Judgement dated 22.04.2021 passed by the learned Consumer Protection Court/CJ & JM, Karachi (East) whereby Complaint No. 02 of 2020 filed by the Appellant [Riaz Ahmed Khan] was dismissed as being barred by limitation.

2. Briefly stated, the Appellant had filed Complaint No.02 of 2020 under Sections 13, 14, 21, and 26 of the Sindh Consumer Protection Act, 2014 against the Respondents, alleging medical negligence, professional misconduct, and consequential physical, mental, and financial suffering. It was stated that the Appellant has been working in China and visited the Respondent Hospital on 30-05-2019 when the doctors performed certain tests and x-ray. The doctors suspected Lymphadenopathy and recommended needle biopsy for which purpose the Appellant was told he would be given local anaesthesia so he would remain conscious during the procedure. On 21-06-2019, the biopsy was started under the supervision of Respondent No.02 [Dr. Waseem Memon]. The Appellant was given local anaesthesia. A needle was inserted for the sample in the body. The remained conscious however within two minutes of anaesthesia the Appellant suddenly turned unconscious and the last words the Appellant heard from Respondent No.2 were "Oh ye haddee mein chala gaya hai" and thereafter, the Appellant became conscious after 48 hours while the Appellant was medically expired for more than Ten minutes initially. After the Appellant became unconscious due to the blunder of Respondent No. 2 and his Team and the Respondent No. 2 called E.R Team for the emergency who started CPR on the Appellant's body and revived the pulse in six minutes, then again collapsed, and again CPR revived pulse in four minutes, thereafter, the Appellant was put on a ventilator for 48 hours and kept in ICU. In the meantime; the doctors of

Respondent No. 1 maltreated the family of the Appellant and pressurized them to pay Rupees five lacs into the hospital account of Respondent No. 1 for further treatment. Somehow; the family of the managed to pay Rupees One Lac for the life of the Appellant. The Appellant served a legal notice dated 12-09-2019 upon the Respondents, which was replied to vide response dated 03-12-2019 and final reply dated 12-12-2019 in which all allegations were denied. The Appellant filed the Complaint before the Consumer Court through attorney on dated 11.02.2020. The learned Consumer Court, after recording the evidence of the parties and hearing their respective counsel, dismissed the complaint vide impugned Order dated 22.04.2021 principally on the ground that the same was filed beyond the period prescribed under Section 29(4) of the Sindh Consumer Protection Act, 2014.

3. Learned counsel for the Appellant read out the relevant parts of the impugned Order and submitted that the learned Consumer Court has overlooked the applicable provision of the Consumer Act whereby the period of limitation, if sufficient cause is shown, can be extended by 60 days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of service. He submits that the sufficient and bona fide explanation was furnished for the delay i.e. that the Appellant had travelled to China on 29.12.2019 where the pandemic Covid-19 outbreak had already emerged. He, therefore, submits that the complaint was within time and even otherwise in case of any delay the period should have been condoned. He further submits that the Appellant had instructed his Special Power of Attorney holder not to institute the complaint immediately as the attorney was suffering from Covid-19 symptoms, which explanation was brought on record through the Appellant's affidavit-in-evidence but was not properly appreciated. He contends that the existence of the Special Power of Attorney was evident from the record, no specific application seeking dismissal on limitation was filed, and the explanation contained in paragraph-15 of the affidavit-in-evidence was not confronted in cross-examination. He further submits that the Appellant had produced his passport showing his travel to China and that the matter involving serious allegations of medical negligence, ought to have been decided on merits rather than dismissed on a technical ground. He relied upon the case of *Islamic Republic of Pakistan through Secretary, Ministry of Railways and others v. Abdul Wahid and others*, 2011 SCMR 1836, *Punjab Road Transport Corporation v. Zahida Afzal and others*, 2006 SCMR 207, *Darnley v. Croydon Health Services NHS Trust*, 2019 SCMR 143, and *Dr. Atta Muhammad Khanzada v. Muhammad Sherin*, 1996 CLC 1440.

4. On the other hand, learned counsel for the Respondent submitted that no condonation application was filed by the Appellant and it was only after such ground was taken by the Respondent in its Written Statement that the Appellant in its Affidavit-in-Evidence submitted that he travelled to China, however there is no evidence of such travel. Learned counsel for the Respondents further submits that the Appellant himself pleaded in the complaint that the cause of action lastly accrued upon issuance of the final response dated 12.12.2019. Therefore, according to learned counsel, the limitation period commenced from that date and expired before institution of the complaint on 11.02.2020. He accordingly submits that the learned Consumer Court rightly dismissed the complaint as time barred. He relied upon the case of *Bank of Punjab through attorney v. Dewan Salman Fiber Limited*, 2017 CLD 451, *Nawabzada Muhammad Zaman Khan through Attorney v. Municipal Committee*, 2014 MLD 1417, *Tanvir Ahmad Butt v. The Director, Oratier Technologies (Pvt.) Ltd. PLD publishers*, 2018 CLD 1064, *Muhammad Yasin v. District & Sessions Judge and others*, 2017 CLD 1196, *Al-Ghazi Tractor Limited through Manager and 2 others v. Peer Muhammad Ali*, 2019 CLC 580 and *United Bank Limited v. Ghulam Rafiq*, 2020 CLD 129.

5. In exercise of his right of rebuttal, learned counsel for the Appellant submitted that copies of Passport of the Appellant were produced which show the exit stamp dated 29.12.2019 and that there is also a recording of the Defendant available whereby the Defendant admitted its negligence.

6. Heard the learned counsels for the parties and perused the entire record with their able assistance

7. Perusal of the complaint shows that the damages claimed are on account of the alleged wrongful advice on 30-05-2019 and 06-06-2019 and wrongful administering of anaesthesia on 21-06-2019. Therefore, the cause of action occurred on various dates and lastly on 21.06.2019. Whereas, it is not disputed that the complaint was instituted on 11.02.2020. Section 29 (4) provides a period of 30 days from the arising of the cause of action for filing of complaint however proviso thereto empowers the Consumer Court jurisdiction to hear a claim filed after thirty days if it is satisfied that there was sufficient cause for not filing the complaint within the specified period of thirty days provided further that such time may not be extended beyond sixty days from the expiry of warranty or guarantee and where there is no such period then by one year from the date of provision of services.

8. Admittedly no condonation application was filed. The Supreme Court has held in *Muhammad Anwar v. Essa*, PLD 2022 SC 716 that party seeking condonation of delay has to explain each and every day of delay through an

affidavit as such oral submission for condonation of delay was considered invalid in view of the fact that upon expiry of the limitation, the claimant loses his right to enforce his claim through a court of law and consequently a right accrues to the respondent by operation of law which cannot be disturbed lightly.

9. In the instant case the Appellant stated in his affidavit-in-evidence that he left Pakistan on 30-12-2019 for China where there was rapid growth of pandemic Covid-19. He appointed a special attorney on 28-12-2019 before leaving for China but on 10-1-2020 received notice that the attorney had Covid-19 symptoms therefore the Appellant advised him to quarantine himself for at least one month out of concern for public safety and the complaint was filed thereafter.

10. There is no reason, whatsoever, let alone sufficient cause for failure to file the complaint within 30 days of 21.06.2019. It appears from the paragraph in the Complaint regarding the accrual of cause of action that the Appellant considers receipt of final response dated 12-12-2019 from the Respondent Hospital to his legal notice as the date on which cause of action lastly accrued. Whereas under Section 13, the Sindh Consumer Protection Act, 2014 the service provider is liable to the consumer for damages proximately caused by the provision of services that caused damage. Therefore, the cause of action would accrue when services are provided that cause damage not the date of refusal to compensate for such damage. The Applicant travelled to China on 29-12-2019 which was already beyond the limitation period and, as such, does not have the effect of falling within the provisos to Section 29 (4). Even otherwise, the complaint was filed after sixty days of receipt of the Respondent Hospital's final response dated 12-12-2019. The explanation that the attorney had Covid-19 symptoms is unsubstantiated as no medical certificate has been produced to establish the same.

11. For the foregoing reasons, I find no illegality or material irregularity in the impugned Order dated 22.04.2021 warranting interference by this Court in exercise of jurisdiction under Section 34 of the Sindh Consumer Protection Act, 2014. Accordingly, this Miscellaneous Appeal is dismissed and the impugned Order dated 22.04.2021 is upheld, whereby the complaint filed by the Appellant was dismissed as time barred.

**[SAMAN RAFAT IMTIAZ]
JUDGE**

Announced in open Court on 6th October, 2026.

JUDGE