

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Crl. Appeal No.23 of 2019**

Mst. Hafsa Babar  
*Versus*  
Advanced Diagnostic Centre, etc

Appellant by: M/s Muhammad Asif and Muhammad  
Furqan Shabbir, Advocates.  
Respondents No.1 to 3 by: Mian Ahmed Khan; Advocate.  
Respondent No.4 by: Mr. Obaid Ullah, Advocate.  
Respondent No.5 by: Mr. Arif Saeed Qureshi, Advocate

Date of Hearing: 08.09.2020.

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**Ghulam Azam Qambrani, J:** - Through the instant appeal  
the appellant has made the following prayer:-

*"In view of the above it is most respectfully prayed  
from this Honorable Court that:-*

- i. The instant appeal is kindly accepted and the  
impugned judgement is set aside;*
- ii. The respondent No.1, 2 and 3 are penalized as  
envisaged under the Islamabad Consumer  
Protection Act, 1995;*
- iii. The appellant is kindly awarded compensation  
for the fees for multiple blood tests she  
undertook as well as the hassle, mental torture,  
stress and danger she underwent at the hands of  
the respondent No.1, 2 and 3;*
- iv. The appellant is also awarded damages for the  
victimization and illegal act of the said  
respondents as well as the danger that she was  
exposed to at the hands of the said respondents*
- v. The appellant may be awarded any other relief  
that this Honorable Court deems fit and just in  
the interest of justice, equity and fair play."*

2. Brief facts of the case are that the appellant filed a  
Consumer Complaint against the respondents under the  
Islamabad Consumer Protection Act, 1995 against the illegal  
acts and unfair trade practices of respondents No.1 to 3 stating  
therein that she approached respondents No.1 to 3 for her

blood test and respondent No.1 prepared the laboratory reports and delivered the same to the appellant on 29.08.2017 with the report "Negative". The appellant being sensitive about the child, went to another Laboratory i.e. Excel Labs, respondent No.4, on 30.08.2017 to get another report of the said blood test and the result of the said laboratory was completely opposite; that the appellant again to her satisfaction, got her blood test from Islamabad Diagnostic Centre, respondent No.5 on 01.09.2017 and the test report of said laboratory confirmed the report of respondent No.4. Being aggrieved, the appellant filed Complaint under Consumer Protection Act, Islamabad, 1995 before the learned Consumer Court, Additional Sessions Judge, Islamabad, but the learned Judge Consumer Court after hearing the learned counsels for the parties held that the above mentioned offences are triable by Magistrate and directed that the file be sent to the concerned Magistrate for the purpose of trial and fixed the next date as 07.11.2018. Feeling aggrieved, the appellant has filed the instant appeal.

3. Learned counsel for the appellant submitted that she moved from one lab to another due to the act of respondents No.1 to 3; the whole family of the appellant suffered mental torture whereas respondent No.1 is not actually having the facility of such test, but this factum was not disclosed to the appellant.

4. On the other hand, learned counsel for the respondents vehemently opposed the arguments advanced by the learned counsel for the appellants contending that the respondents have purchased the said laboratory on 18.11.2017, whereas the complaint has been filed by the name of accused persons, hence the instant appeal is not maintainable against them.

5. Arguments heard, record perused.

6. Before proceeding further with the main case, in intend to decide the instant C.M No.02 of 2019 .

7. This is an application for condonation of delay under Section 5 of the Limitation Act, 1908. This application was contested by the learned counsel for the respondent contending that the appeal has been filed after an inordinate and unexplained delay of 21 days. The record reveals that the instant appeal has been filed on 01.12.2018 against the judgement dated 22.09.2018 but the diary branch raised various objections including that the object appeal is time barred for 21 days. This objection is misconceived. The judgement was passed on 22.09.2018. The application for obtaining certified copies of said judgement was filed on 09.10.2018 which was ready on 27th October 2018 but the appellant was not informed by the Copying Agency about the preparation of the certified judgment. Whereas, the appellant received the certified copy of the impugned judgement on 19th November 2018, as such, all the circumstances were beyond control of the appellant, therefore, the time consumed in obtaining the certified copy of judgement was beyond the control of the appellant, therefore, keeping in view the above facts and circumstances, the delay caused in filing the instant appeal after 21 days is condoned. For the reasons mentioned in the application, supported by an affidavit, the same is allowed. Reliance in this regard is placed upon the case reported as "Shujahat Hussain Versus Muhammad Habib And Another" ( 2013 SCMR 176) wherein, it has been held as under:-

*A perusal of impugned judgment reveals that petitioner could not get relief, as application filed by him under section 115, C.P.C. being revision petition was found to be barred by time because petitioner was not held entitled for exclusion of the time spent in obtaining certified copies of the judgment under section 12(2) of the Limitation Act. In this behalf reliance was placed by the High Court on the judgment in the case of Said Muhammad (ibid). There is no cavil with the proposition that under subsection (2) of section 12 of the Limitation Act, time spent in obtaining certified copies of the judgment for filing of revision petition is not excluded and this view is prevailing when a judgment in the case of Tahir Ali and others v. Chief Judge, Karachi Small Causes Court,*

*Karachi and another (PLD 1960 Karachi 795) was pronounced by the High Court of Sindh. However, even then implication of subsection (1) of section 12 of the Limitation Act was not considered, according to which in computing the period of limitation prescribed for any suit, appeal or application the day from which such period is to be reckoned shall be excluded. There is no doubt that by invoking revisional jurisdiction of the High Court, an application is moved under section 115, C.P.C., therefore, in the instant case one of the question for consideration would be as to whether time spent in obtaining certified copies of the documents for filing of an application under section 115, C.P.C. (revision petition) cannot be excluded under ,subsection (1). of section 12 of the Limitation Act. Besides it, there would be another aspect of the case namely assuming that neither subsection (1) nor subsection (2) of section 12 -of the Limitation Act were attracted and as per proviso of subsection (1) of section 115, C.P.C.; if revision was filed beyond the period of 90 days, Court had powers to condone the delay in view of the judgment of this Court in the case of Mian Muhammad v. Syed Shamimullah and 2 others 1995 SCMR 69 wherein Mr. Justice Abdul Qadir Chaudhry (as then he was) speaking on behalf of the Bench observed that revision even though filed beyond the period of 90 days could, however, be entertained, if Court was satisfied as to the reasons for delay.*

**Main Case:-**

8. From perusal of the record, it transpires that the appellant approached respondent No.1 for a laboratory test of R.H. Anti Bodies and the report given by the respondent No.1 showed the R.H. Antibody "Negative". Thereafter, the appellant approached Excel Labs/ respondent No.4 for the said test and the report received by the appellant was shocking because it was totally opposite to that of the result showed by respondent No.1. The appellant being worried again approached for the said test from Islamabad Diagnostic Center and the result was same as given by respondent No.4. Perusal of the record further reveals that respondent No.1 is not having the facility of test relating to R.H. Anti Bodies and without having the said facility they have issued, *prima facie*, forged and fictitious report to the appellant, which falls within the definition of professional misconduct and the jurisdiction for the said offence lying with

the Consumer Court. Islamabad Consumer Protection Act, 1995 has been enacted to provide an efficacious remedy to the customer for effective redressal of his grievance and to protect the society from exploitation, therefore, such enactment must be given purposive interpretation keeping in view its basic intent. As per Section 5 of the Islamabad Consumers Protection Act, 1995, it is mandatory for the Consumer Court to decide the controversy and penalized the offender where infringement of rights protected under Section 5 is established whereas, under Section 6 (1) of the Act, *ibid*, the authority is to receive the complaints for the purpose of investigation and determination. And as per Section 9 of the Act, *ibid*, it is not discretionary rather mandatory on the authority to penalized the responsible where the authority is of the opinion that a right of a consumer protected under the Act has been infringed. For ready reference Sections 5, 6 (1) and 9 are reproduced hereunder:-

**5. Objects and functions of the Council, etc.--** (1) *The objects and functions of the Council shall be to determine, promote and protect rights of consumers, including--*

*(a) the right of protection against marketing of goods which are hazardous to life and property;*

*(b) the right of information about the quality, quantity, potency, purity, standard and price of goods and services;*

*(c) the right of access to a variety of goods at competitive prices;*

*(d) the right for redress against unfair trade practices of unscrupulous exploitation of consumers;*

*(e) the right of Consumers' education; and*

*(f) the right of easy availability of essential services.*

*(2) The Council shall be responsible for formulation of the policies for promotion and protection of the rights of consumers, fair and honest trade practices by the manufacturers, producers and suppliers of goods and services in relation to interest of consumers and their effective implementation;*

*(3) For promotion and protection of the interests of consumers, the Council shall coordinate between the Government, manufacturers, producers, suppliers and consumers.*

**6. Authority.--***(1) The Authority shall receive complaints of the consumers and those made on behalf of the council for investigation and determination thereof.*

*(2) The Police, Capital Development Authority and other agencies of the Federal Government and Islamabad Capital Territory Administration shall act - in aid of the Authority for performance of its functions under this Act.*

**9. Penalties.--***(1) Where any right of consumer required to be protected under section 5 of the Act is in any way infringed, the person responsible for such infringement shall be punished with imprisonment which may extend to two years, or with fine which may extend to forty thousand rupees, or with both.*

*(2) Whoever makes advertisement through print of electronic media or by chalking on walls or in any other manner in contravention of section 7, he shall be punished with imprisonment which may extend to two years, or with fine which may extend to thirty thousand rupees, or with both.*

*(3) The Authority may, where it deems appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.*

*(4) The Authority may, where it deems necessary for protection of the rights of other consumers, order for confiscation of any goods or material or direct for their destruction.*

9. In view of the above facts and circumstances, it is a case of professional misconduct, which falls within the jurisdiction of the Consumer Court, therefore, the instant appeal is **allowed** and the impugned order dated 22.09.2018 passed by the learned Authority under the Islamabad Consumers Protection Act, 1995 is hereby set-aside. The case is remanded to the learned Authority under the Islamabad Consumers Protection Act, 1995 for decision of the case after recording of evidence of

both the parties within a period of two months after receipt of certified copy of this judgment.

~~Ghulam Azam Qambrani~~  
Judge

Announced in Open Court, on this 23rd/09/2020.

~~Judge~~

*Rana M. Ift*