

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Civil Revision No. 189 of 2014

M/s Shifa International Hospitals Ltd. etc.

Vs

Nadeem Akhtar

S. No. of order/ proceedings	Date of hearing	Order with signature of Judge and that of parties or counsel where necessary.
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02) **25-6-2014.** Mr Zaheer Bashir Ansari Advocate, for the petitioners.

Present civil revision has been preferred against Order dated 27-3-2014, passed by learned Single Judge in Chamber, in C.M. No. 578/2013 of C.S. No. 118 of 2011, whereby the application of petitioners/defendants under Order VII Rule 11 of Civil Procedure Code, 1908 (hereinafter referred to as the “Code”) was dismissed.

2. Briefly stated, facts are that the petitioner No.1 is managing and operating a hospital in Islamabad. The respondent in the present civil revision filed a civil suit for recovery of damages amounting to Rs.21,00,00,000/- (Two hundred and ten million rupees). The respondent claimed damages for the alleged gross professional negligence, physical and mental agony, loss of quality of life, emotional distress and financial loss, etc. on part of the petitioners. The defendants/petitioners filed an application under Order VII Rule 11 of the Code, praying for rejection of the suit, mainly on the ground that it was barred by law in terms of Sub Section 4 of Section 31 of the Pakistan Medical and Dental Council Ordinance, 1962 inserted vide Medical and Dental Council (Amendment) Act, 2012 (hereinafter referred to as the “Ordinance”).

3. The learned Single Judge in Chamber, after examining the provisions of Section 31 of the Ordinance, concluded that Sub Section 4 of the section, is confined to a specific purpose as described in Sub Section 1. Hence, it does not bar the ordinary jurisdiction of the Courts.

4. Mr Zaheer Bashir Ansari ASC appeared for the petitioners and reiterated that Section 31(4) of the Ordinance is a bar for filing a suit for damages as contemplated in terms of Clause D of Rule 11, Order VII of the Code. It was stressed that no suit for damages is maintainable unless the claim of professional negligence is initially established before Disciplinary Committee of the Council as provided under Sub Section 4 of Section 31 of the Ordinance.

5. We have examined provisions of the Ordinance, more particularly Section 31 thereof. The preamble of the Ordinance provides for the scope and determines the object for its legislation. The scope and purpose as stated in the preamble is to consolidate the law relating to the legislation of Medical Practitioners and Dentists and to reconstitute the Medical and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualifications in Medicines and Dentistry.

6. Section 3 of the Ordinance provides for the constitution and composition of the Council. The Ordinance, inter alia, empowers the Council, in terms of Section 23 of the Ordinance, to maintain a Register of Medical Practitioners possessing qualifications, which are recognized medical qualifications for the purposes of the Ordinance. The provisions relating to removal of names from the Register is provided under Section 31 of the Ordinance.

7. Sub Section 1 of Section 31, vests a discretion in the Council to direct the Registrar to remove the name of any registered

Medical Practitioner or registered Dentist from the Register on the terms and conditions as mentioned in said provision. Sub Section 2 empowers the Council to restore a name removed from the Register under Sub Section 1. Sub Section 3 provides that for the purposes of an inquiry under Sub Section 1, the Disciplinary Committee of the Council shall exercise such powers as mentioned therein. Sub Section 4 provides that the claim of professional negligence shall initially be established before the Disciplinary Committee of the Council before any “other proceedings”.

8. The language of Section 31 is plainly clear. It is a settled law that a sub section cannot be read or interpreted in isolation. A statute is to be read as a whole, harmoniously and each provision interpreted within the context of the statute. Sub sections of Section 31, when read together in the context of the object and purpose of the Ordinance, leaves no doubt whatsoever that the sub sections are an integral part of the whole section and interdependent on each other. This view is further reaffirmed by the language used in Sub Section 4. The requirement that the claim of the professional negligence shall initially be established before the Disciplinary Committee of the Council before any “other proceedings” inevitably relates to the proceedings for removal of names from the Register maintained under Section 23 of the Ordinance. “Other proceedings” appearing in Sub-Section 4 has reference to and creates nexus with the proceedings as contemplated in Sub-Section 1 of Section 31. Extending it to any other proceedings would be reading in the statute something not intended by the legislature. There is no inconsistency and, moreover, by any stretch of imagination, it is not an ouster clause.

9. It is also pertinent to mention that the only provision in the Ordinance which may appear to be an ouster clause, is Section 32,

which provides that no suit, prosecution or other legal proceedings shall lie against the Government, the Council or any Committee thereof or any Officer or Servant of the Government or Council for anything which is in good faith done or intended to be done under the Ordinance.

10. The provisions of Section 32 of the Ordinance are not relevant for the purposes of the present case; however, its meaning cannot be extended to treat it as an ouster clause for barring the ordinary jurisdiction of the Courts.

11. It may be emphasized that it has been consistently held that the jurisdiction of the ordinary Courts cannot be abolished/doubted or in any other manner restricted, unless this is done by express, clear and unambiguous words. In case of *Secretary of State Versus Mask & Co.* (A.I.R. 1940 Privy Council 105), the Privy Council held as follows:

“It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”

12. The Hon’ble Supreme Court of Pakistan has held the same view regarding interpretation of ouster clauses which appear to bar the ordinary jurisdiction of the Courts. Reference may be made to cases of *Abdul Latif Versus The Government of Pakistan & others* (PLD 1962 SC 384), *Karamat Ali Versus Mohammad Younis* (PLD 1963 SC 191), *State Versus Qaim Ali Shah*,

(1992 SCMR 2192), *Federation of Pakistan Versus Ghulam Mustafa Khar* (PLD 1984 SC 26).

13. There is no provision in the Ordinance, which can remotely be inferred as placing a bar on the ordinary jurisdiction of a Court. The interpretation of Section 31(4) as argued by learned counsel for the petitioner is misplaced and not tenable under law.

14. In the light of above discussion, the learned Single Judge in Chamber has correctly interpreted the provisions of the Ordinance, more particularly Section 31(4) thereof. No material defect or infirmity has been pointed out in the order dated 27-3-2014. The impugned order is in accordance with law, having correctly interpreted the provisions of the Ordinance and therefore, we are not inclined to interfere with the said order. As a consequence, the civil revision is hereby dismissed in limine.

(NOOR-UL-HAQ N. QURESHI) (ATHAR MINALLAH)
JUDGE JUDGE

Announced in open Court, on 3rd July, 2014.

JUDGE

JUDGE

Approved for reporting.

JUDGE