

*Form No: HCJD/C-121.*  
**JUDGEMENT SHEET**

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

Civil Revision No. 126 of 2019

Pakistan Institute of Medical Sciences through its Executive  
Director

*Vs.*

M/s Gillani Builders

PETITIONER BY: Mr. Imran Raza, Legal Officer  
along with Dr. Amjad, Executive  
Director, PIMS.

RESPONDENT BY: Mr. Tahir Mehmood Abbasi,  
Advocate.

Date of Hearing: 17.04.2019.

**ATHAR MINALLAH, C.J.-** Through this petition  
Pakistan Institute of Medical Sciences (hereinafter referred to as the  
"**Petitioner**") has assailed order, dated 14.02.2019 passed by the  
learned Additional District and Sessions Judge-VII, Islamabad West.

2. The facts, in brief, are that M/s Gillani Builders (hereinafter  
referred to as the "**Respondent**") filed a suit on 29.01.2018 seeking  
declaration, permanent and mandatory injunction. The dispute  
between the parties is regarding the terms and conditions of  
agreement, dated 27.10.2016 (hereinafter referred to as the  
"**Agreement**"). Along with the suit, application under Order XXXIX

rules 1 and 2 of Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**") was also filed. Ad-interim injunction granted by the learned trial Court was not confirmed vide order, dated 09.02.2019. The Respondent preferred an appeal which was allowed by the learned Additional District & Sessions Judge vide the impugned order, dated 14.02.2019. The application seeking grant of temporary injunction was consequently allowed. The Petitioner has assailed order, dated 14.02.2019.

3. The learned Counsel for the Petitioner has contended that; the Respondent had instituted the suit on the basis of malafide; agreement, dated 27.10.2016, was valid for two years and extendable for a period of one year subject to satisfactory performance of the Respondent and mutually agreed terms and conditions relating to extension of the Agreement; Agreement was not extended because the management of the petitioner Hospital was not satisfied with the performance of the Respondent. The Respondent filed a suit and obtained an injunctive order; the Respondent is running its business despite the fact that the term of Agreement has expired; no irreparable loss would be suffered by the Respondent.

4. The learned Counsel for the Respondent, on the other hand, has argued that; the Agreement was valid for a period of three years; the petitioner had threatened to terminate the Agreement before completion of three years was illegal; the learned appellate Court after taking into consideration all the relevant matters had rightly allowed the appeal; the agreement is in the nature of a license and, therefore, the provisions of the Easements Act, 1882 are attracted,

particularly in this case section 60 ibid empowers the Petitioner to revoke the license.

5. The learned Counsels have been heard and record perused with their able assistance.

6. The admitted facts are that respondent no.1 had filed a suit and that the learned trial Court did not confirm the ad-interim injunction. The learned appellate Court allowed the appeal and granted injunction by concluding that the learned trial Court had misconstrued the relevant clause regarding validity of the Agreement.

7. A plain reading of the Agreement unambiguously shows that the parties had agreed that initially it would be valid for a period of two years and that it could be extended for a further period of one year subject to satisfactory performance by the Respondent and on the basis of mutually agreed terms and conditions. There is no ambiguity insofar the language of the Agreement is concerned. It appears that the learned appellate Court has not properly appreciated the explicit language of clause A(2) of the Agreement. On the other hand, the learned trial Court by correctly interpreting the provisions of the Agreement had refused to confirm the ad-interim injunction. Moreover, when the Agreement is read as a whole, it makes it obvious that section 60 of the Easements Act, 1882 is not attracted. The initial period of two years was not extendable for a further period of one year automatically. Two conditions were required to met, firstly satisfactory performance of the Respondent and secondly the parties had to mutually agree regarding terms and conditions for extension. Moreover, no irreparable loss is likely to be suffered because the

Agreement, in its nature, is revocable. The learned trial Court after taking the relevant matters into consideration had rightly concluded that in the facts and circumstances, a case for confirmation of the ad interim injunction was not made out. Admittedly, the Agreement has not been extended after expiry of two years, which had lapsed on 28.10.2018.

7. For what has been discussed above, discretion exercised by the learned appellate Court by misreading the Agreement was definitely not in consonance with law. This petition is, therefore, **allowed** and the impugned order, dated 14.02.2019, is hereby set aside. Consequently the order passed by the learned trial Court stands restored.

**(CHIEF JUSTICE)**

Saeed.