

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-1461 of 2019

Date Order with Signature(s) of Judge(s)

Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

Ziauddin Hospital Clifton Campus, Karachi.....Petitioner

V E R S U S

Javed Iqbal and others.....Respondents

Priority.

1. For hearing of CMA No. 6637/19.
2. For hearing of main case.

29.04.2019

M/s. Asim Mansoor Khan and Zeeshan Bashir Khan,
Advocates for petitioner.

The respondent No.1 filed Suit No. 1137 of 2017 for damages and compensation in the Court of VIIth Senior Civil Judge, Karachi-South with the following prayer:-

- a. *Declare that the defendant No.1 has been negligent in treating the patient with due care which has resulted in loss of life;*
- b. *Direct the defendant No. 1 to pay a sum of Rs.10,00,000/- towards expenses incurred by the plaintiff for treatment of his son including conveyance charges; damages amount to Rs. 1,00,00,000/- for unprofessional conduct and negligence and irresponsible attitude of all concerned doctors, consultants and medical staff causing death of the patient;*
- c. *Direct the defendant No.1 to pay Rs.25,00,000/- for mental torture and anguish;*
- d. *Direct the defendant to pay Rs.10,00,000/- for illegally retaining medical record, inconvenience caused and incurred expenses for repeated visit to defendant No.2 hospital causing mental torture and anguish;*
- e. *Direct the defendant No. 3 to act in accordance with law.*
- f. *Cost of the suit; and*
- g. *Any other relief that this Honourable Court may deem fit and appropriate in the circumstances of the present case.*

The defendant No. 1 in the suit is Kharadar General Hospital, which is respondent No.2 in the present petition, whereas defendant No.2 is Ziauddin Hospital, which has filed this constitution petition. The case of the petitioner is that after filing the suit, written statement was filed by the petitioner in the trial Court and thereafter issues were framed. The trial Court initially settled 24 issues, however, since the petitioner was not satisfied with the settlement of issues in the manner in which they were framed, therefore, application was filed for re-casting the issues, however, vide order dated 12.09.2019 the application was dismissed by the trial court. Being aggrieved, the same petitioner filed Civil Revision Application No. 86 of 2018 in the Court of Additional District & Sessions Judge, Karachi-South. The learned revisional Court after hearing the parties settled 16 issues but the petitioner again raised objection against issue No. ix and approached this Court for re-casting the issue, which is reproduced as under:-

“Whether the deceased was already critically ill when he was brought to the defendant No.2 hospital and whether any negligence was caused by defendant No.2 which resulted into the death of minor?”

It is well settled proposition of law that issues are settled on the basis of pleadings. In the plaint against Ziauddin Hospital, prayer for damages and compensation in the sum of Rs.10,00,000/- has been made for illegally retaining medical record, inconvenience caused and incurred expenses for repeated visit to defendant No.2 hospital causing mental torture and anguish to the plaintiff/respondent No.1.

Learned counsel for the petitioner argued that in the trial Court affidavit-in-evidence of the plaintiff/respondent No.1 has been filed in which various extraneous allegations and submissions have been made, which are out of pleading.

Mr. Muhammad Ashfaq, who is also an advocate submitted a Special Power of Attorney, which has been executed by respondent No.1 in his favour. He argued that the affidavit-in-evidence was filed on the basis of issues settled by the trial Court earlier, however, he submits that he will file fresh affidavit-in-evidence in view of issues settled by the revisional court in its order dated 24.12.2018 and proper application in this regard will be filed in the trial Court. The matter is pending in the trial court and any observation on merits may cause prejudice to the case of either party. The Attorney of the respondent No.1 himself stated that fresh affidavit will be filed in view of the issue settled by the Revisional Court.

As a result of above discussion, this petition is disposed of by consent that the respondent No.1 shall file fresh affidavit in the trial court in accordance with the pleading as it is a well settled exposition of law that parties cannot lead evidence beyond the pleadings. Pending applications are also disposed of in the above terms.

JUDGE

JUDGE

Athar Zai