

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 08.02.2022

Date of hearing: 14.09.2022

Date of Decision: 09.01.2023

FIRSTAPPEAL NO.15/2022

IN THE MATTER OF

DR. MONICA GOGIA,

Metamorphosis Clinic,
M-30A, Greater Kailash –I,
New Delhi -110048.

METAMORPHOSIS CLINIC

Metamorphosis Clinic,
M-30A, Greater Kailash –I,
New Delhi -110048.

(Through: Ms. Mansi Gupta, Advocate)

...APPELLANTS

VERSUS

MR. GOLDY SAHNI

S-46, 2nd Floor,
Rajpuri, Dwarka,
New Delhi -110059.

...RESPONDENT

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Ms. Mansi Gupta, Counsel for the appellants.
Respondent in person.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT****JUDGMENT**

1. The facts of the case as per the District Commission record are:

“The complainant approached the Opposite Parties for his hair related treatment and was advised Metamorphosis hair treatment which can provide 100% perfect treatments to hair related problems. The complainant met OP-1, Dr. Monica Gogia and after several discussions he was described a plan for this treatment with 95% guarantee and the treatment was PRP in which four to five session would be taken. On the asking OP complainant deposited the entire amount of the package of Rs.51,750/- vide invoice No. INV2943 dated 28.12.2016. It is alleged that the OPs did not provide professional hair care solutions related to hair loss or related disorders of the complainant. It is alleged that despite four sittings the complainant did not find 1% difference in his hair problem. It is alleged that the treatment was not professional. When the complainant brought this fact to the notice of OP, they started misbehaving with him. The complainant sought refund of the amount deposited with the OPs but the same was also declined. The complainant wrote letters dated 08.06.2017 and 23.06.2017 to the OPs seeking refund of the amount but to no use. It is alleged that by not giving professional treatment to the complainant related to hair loss, the OPs have played fraud with the complainant. It is alleged that there is deficiency on the part of the OPs as well as negligence in giving treatment

to the complainant. Hence this complaint seeking refund of Rs.51,750/- + cost of the medicine of Rs.25,000/-, Rs.2,00,000/- as compensation for mental harassment and Rs.30,000/- as litigation charges.”

2. The District Commission after taking into consideration the material available on record passed the judgment dated 04.12.2021, whereby it held as under:

“It is the admitted case of the parties that the complainant had taken hair treatment at clinic run by the OPs. It is also the admitted case of the parties that the complainant had deposited Rs.51,750/-with the OPs for treatment. It is also admitted case of the parties that the treatment continued for about three and a half month. However the case of the complainant is that after completion of four sittings the complainant did not find 1% difference in his hair problems. The case of the OPs is that the complainant was given professional treatment and the chances of success were duly explained to the complainant. Now the question is: Whose version is worth reliance? The key lies in the allegations made in paragraph 6 (six) of the complaint wherein the complainant alleged that despite 4 sittings he did not find 1% difference in his hair problems. In reply to this allegation in written statement and affidavit of evidence the OPs only stated that during the treatment the complainant did not complain, even once. They have nowhere explained as to why there, was no difference in the hair problem of the complainant. There is no firm assertion on the part of the Ops as to why as to why the complainant did not find any different despite the treatment. They have nowhere explained as to whether the treatment was successful or not and what is the logic behind it. In the absence of firm assertion on the part of OPs, the version of the complainant appears to be reasonable and worth reliance. Accordingly we are satisfied that there was deficiency on the part of the

OPs in giving her treatment to the complainant. Accordingly, we allow the complaint and direct the OPs to refund the amount of Rs.51,750/- to the complainant, pay Rs.1,00,000/- as compensation for mental harassment and Rs.30,000/- as litigation charges within 45 days from the receipt of this order failing which entire amount shall become payable with the interest @ 12% per annum till realisation.”

3. Aggrieved by the aforesaid judgment of the District Commission, the Appellants have preferred the present appeal, inter-alia, contending that District Commission failed to appreciate that after repeal of the Consumer Protection Act, 1986 the intent of the Legislature was to exclude ‘healthcare’ services from the meaning of ‘services’ under Section 2(42) of the newly enacted Consumer Protection Act 2019, that there was no fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, that Respondent went against the advice of the Appellants for hair transplant, that Respondent himself decided to opt for PRP treatment after weighing all the pros and cons, risks and benefits etc. of the treatment.
4. A perusal of record shows that after service of notice, the Respondent appeared before this commission but failed to file reply to the appeal despite directions vide order dated 03.08.2022, 18.08.2022 & 14.09.2022.
5. We have perused the material on record filed alongwith the appeal and heard the counsel for the Appellants and Respondent in person.
6. The first contention raised by the Appellants is that after repeal of the Consumer Protection Act, 1986 the intent of the Legislature

was to exclude 'healthcare' services from the meaning of 'services' under Section 2(42) of the newly enacted Consumer Protection Act 2019. In this regard, the appellants have placed reliance on the judgment of Hon'ble High Court of Bombay passed on **25.10.2021** in Public Interest Litigation No. 58/2021 titled as *Medicos Legal Action Group v. Union of India*. The relevant paras of the aforesaid judgment read as under:

"10. Despite not taking a rigid view, we are of the clear opinion that the contention raised by the learned counsel for the petitioning Trust, of the Hon'ble Minister having made certain statements in course of parliamentary debates on the Bill that preceded the 2019 Act, is of little relevance. From the pleadings it is found that 'health care' was initially included in the definition of the term "service" appearing in the Bill but after extensive debates, the same was deleted. This is the sheet-anchor of the claim raised in the writ petition that 'health care' not being part of the definition of "service" in 11-PIL-58-2021 section 2(42) of the 2019 Act, as distinguished from the definition in the Bill, deficiency in services relating to 'health care' cannot be the subject matter of complaints before the consumer fora. We wonder, what turns on such deletion. In the context of the 1986 Act and the 2019 Act, there could be no two opinions that the definition of "service" having been read, understood and interpreted by the Supreme Court in Indian Medical Association (supra) to include services rendered by a medical practitioner to his patient upon acceptance of fees/charges, the parliamentarians might have thought of not including 'health care' as that would have amounted to a mere surplusage. If at all the Parliament while repealing and replacing the 1986 Act with the 2019 Act had intended to give a meaning to the

term "service" different from the one given by the Supreme Court, such intention ought to have been reflected in clear words by a specific exclusion of 'health care' from the purview of the 2019 Act. While construing a statute, what has not been said is equally important as what has been said.

11. We, therefore, hold that mere repeal of the 1986 Act by the 2019 Act, without anything more, would not result in 11-PIL-58-2021 exclusion of 'health care' services rendered by doctors to patients from the definition of the term "service".

7. The aforesaid decision was challenged by the Petitioner before Hon'ble Supreme Court vide Special Leave Petition No. 19374/2021, which was dismissed by the Apex Court vide order dated 29.04.2022. A perusal of the aforesaid paras reflects the health care services were not excluded from the definition of the 'services' provided by the Consumer Protection Act, 2019 and therefore, this contention of the Appellant is devoid of any merit and is dismissed. It is further noted that no explanation was given by the Appellants for the failure in growing hair of the Respondent despite 4 PRP sittings and hair nourishment session.
8. In view of the forgoing, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the findings of the District Forum. Consequently, we uphold the judgment dated 04.12.2021 passed by the District Consumer Disputes Redressal Forum, Dwarka, New Delhi-110077.

9. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment. FDR, if any, be released in favour of the respondent namely Mr. Goldy Sahni.
10. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
11. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On:
09.01.2023