

A.F.R.
RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW
APPEAL NO.1120 OF 2010**

(Against the judgment/order dated 04-06-2010 in Misc.
Case No. 111/2009 of the District Consumer Forum, Rampur)

Smt. Geeta Agarwal, D/o Late R. N. Gupta
R/o Gangapur Civil Lines
In front of Civil Courts, Rampur

...Appellant/Complainant

Vs.

Dr. Smt. Surbhi Verma,
W/o Dr. Sandeep Verma
R/o Preeti Nursing Home
Rahe Murtaza, Rampur

...Respondent/Opposite Party

BEFORE:

**HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. CHANDRA BHAL SRIVASTAVA, MEMBER
HON'BLE MR. JUGUL KISHORE, MEMBER**

For the Appellant : None appears.
For the Respondent : Sri R K Gupta, Advocate.

Dated : 07-07-2014

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

This appeal has been filed against the judgment and order dated 04-06-2010 passed by the District Consumer Forum, Rampur in Misc. Case No. 111/2009 thereby dismissing the complaint of the appellant at the admission stage itself.

At the time of hearing of this appeal no one appeared on behalf of the appellant. Sri R K Gupta, learned Counsel for the respondent remained present, who have been heard. A very short question is considerable in this appeal as to whether as per law laid down by Hon'ble

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Supreme Court in the case of Martin F. D'Souza V/s Mohd. Ishfaq reported in 2009 (3) ALJ 165, the complaint was liable to be dismissed at its admission stage looking into the experts' opinion sought before the admission of the complaint. A perusal of the impugned order shows that the District Consumer Forum held that whenever a complaint is received against a doctor or hospital by the Consumer Fora or by the Criminal Court then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or Criminal Court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed and only after that doctor or committee reports that there is prima facie case of medical negligence should notice be then issued to the concerned doctor/hospital as is the law of the land and it emerges before the District Consumer Forum with the existing evidence on record that there is no prima facie case of medical negligence of opposite party, therefore, the case being bereft of force, is liable to be dismissed and the complaint case under Section 12 of the Consumer Protection Act 1986 is not admitted for adjudication.

Without going through the other facts and circumstances on record pertaining to medical negligence or other aspect of the case, we are of this view that since the law laid down by the Hon'ble Supreme Court in the aforesaid case of Martin F. D'Souza has not been found a good law in respect to the medical negligence actionable in Consumer Protection Act, except the cases of criminal nature and since this law is no longer a good law in view of the subsequent judgment of Hon'ble Supreme Court, we are of this view that the learned District Consumer Forum committed error thereby not admitting the complaint of the complainant/appellant



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and this appeal deserves to be allowed for setting aside the impugned order and the matter to be directed to be heard afresh by the District Consumer Forum. Whatever may be the experts' opinion on record, need not to be commented at this stage, it cannot be said that there would have not been even a prima facie case of medical negligence of the respondent /opposite party which should have been decided by the District Consumer Forum after affording to both the parties for proper opportunities of hearing. Therefore, non admission of the complaint is not tenable.

ORDER

The aforesaid appeal is allowed. The impugned order dated 04-06-2010 passed in Misc. Case No. 111/2009 is hereby set aside and the matter is hereby remanded to the District Consumer Forum concerned to admit the complaint of the complainant for hearing thereby issuing the notice to the opposite party. Let this order be sent immediately to the District Consumer Forum where an endeavour shall be made by the District Consumer Forum to decide the case as early as possible preferably within three months of receipt of this order.


(JUSTICE VIRENDRA SINGH)
PRESIDENT


(CHANDRA BHAL SRIVASTAVA)
MEMBER


(JUGUL KISHORE)
MEMBER

PNT