

IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.310 of 2018
[Muhammad Ayub Mushtaq v. Shakila Gazali and others]

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

- 1.For order on office objection
- 2.For hg of main case
- 3.For hg of CMA No.3425/18

12.05.2025.

M/s. Abid S. Zuberi, Imran M. Mahar and Hira Ahmed,
advocates for appellant.
Mr. Asif Ahmed Memon, advocate for respondents.

J U D G M E N T

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MUHAMMAD IQBAL KALHORO J: Appellant filed a suit, among others, for specific performance of contract against respondents. During the suit, when evidence of three witnesses of the appellant/plaintiff had been recorded and fourth witness was in the dock, he filed an application for submitting certain documents. Application was dismissed and the documents, a list of which is available in para. 6 of the impugned order, were disallowed on the ground of their irrelevancy to the case. That order dated 23.05.2018 has been challenged by appellant/plaintiff in this appeal.

2. We have seen that amongst these documents there are documents which the appellant/plaintiff claim to be in possession of defendants and the defendants deny this fact. This is exactly the same objection that has been raised by learned counsel for respondents here also that these documents are bogus first and second they are not in possession thereof. According to him, if this application is allowed and the defendants are called upon to bring up these documents on record and if they fail to do

so, an adverse inference would be drawn against them. However, we fail to understand that how such an inference would be drawn against the respondents if in response to Court's subpoena to produce such documents the defendants deny their existence or possession by them through a statement or affidavit-in-evidence.

3. The relevancy, contents or probative value of the documents, sought to be produced, with the pleadings cannot be decided at the time of filing of documents in evidence. Whether the documents are relevant or not and whether its contents are true and have probative value, and help a party or not in establishing its case can only be decided at the time of replying the relevant issues, the burden of which is always upon a person who has asserted a particular fact in the pleadings and has filed the documents to support it. We have seen that these documents which the appellant/plaintiff seeks to produce are aimed at establishing his case for the relief(s), therefore, in law the burden to prove contents of those documents would always be upon him. It may be mentioned that in case the respondents/defendants, when called upon to file these documents, fail to do so and file a statement denying to be in possession of those documents, no adverse inference under the Qanoon-e-Shahdat Order would be drawn against them, as the burden of whether or not these documents are in their possession would also be upon the plaintiff to establish. Therefore, the ground of objection by defendants' counsel that the case of the defendants would be prejudiced in case application is allowed and documents produced does not seem to be sustainable in peculiar facts of the case.

4. The reason for dismissing the application given by learned single Judge is that the documents sought to be produced are not relevant. We have observed above that it cannot be decided at the stage of filing of the documents in the Court. If such practice is allowed to prevail then

before filing of a document, the Court will have to make a decision first, independent of pleadings of the parties, to conclude whether or not the document is relevant, and then allow it to be produced, leaving the question of proof of its contents or its probative value to be decided later on. This would be absurd and amount to exercising the jurisdiction twice for achieving the same object.

5. Therefore, we set aside the impugned order and allow the appellant/plaintiff to produce the documents subject to all just exceptions, to be decided finally in the judgment, legal or otherwise raised by the defendants at the time of production of such documents. We have seen that the suit is pending since 2005, therefore, the trial Court is directed to expedite the trial and conclude it within a period of six months.

The appeal is accordingly disposed of in above terms along with pending application.

JUDGE

JUDGE

HANIF