

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 507 / 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

- 1) For hearing of CMA No. 18081/2016.
- 2) For hearing of CMA No. 17011/2017.

19.01.2018.

Mr. Moin Azhar Siddiqui Advocate for Plaintiff.
Mr. Badar Alam Advocate for Defendant No. 1.

Both these applications have been filed by the Plaintiff and through CMA No. 18081/2016 under Article 59, 61 and 84 of the Qanoon-e-Shahadat Order, 1984, it has been prayed to call Defendants to appear in person and put their thumb impression as well as signatures which then be sent for verification to NADRA or hand writing expert and through CMA No. 17011/2017 the Plaintiff seeks directions to Defendant No. 3 to provide original of letter dated 3.2.2015 written by Defendant No. 2 to Defendant No. 3 for verification of the signatures of the attorney.

Learned Counsel for the Plaintiff submit that this is a Suit for Specific Performance and the Defendants have denied the contents of the agreement as well as their signatures therefore, both these applications may be allowed so that it is proved that any such agreement was executed or not. In support he has relied upon ***Sardar Muhammad V. Mst. Shakuran Bibi (2002 CLC 760)***.

On the other hand, learned Counsel for the Defendants submits that the provisions of Article 84 of the Qanoon-e-Shahadat Order 1984,

can only be invoked for verification of the signatures when the signatures are admitted or proved, whereas, there is no question of referring the signatures or thumb impression prior to the evidence. Per learned Counsel these applications are premature in nature and are liable to be dismissed. In support he has relied upon ***Rana Mamoon Rasheed V. Kokab Noorani Okarvi and 4 others (PLD 1999 Karachi 257)***.

I have heard both the learned Counsel and perused the record. At the very outset, learned Counsel for the Plaintiff was confronted as to how at this stage of the proceedings when even issues have not been settled and no evidence has been led such applications can be granted and the Court be involved in the process of verification of the documents and the assertions of one party against the other. The learned Counsel could not satisfactorily respond but contends that these applications can be granted at this stage as well. However, I am of the view that these applications are premature in nature whereas, it is for the Plaintiff to lead evidence in support of the averments made in the plaint and for such purposes, if any witness is to be summoned the Plaintiff can always seek assistance from the Court. However, either under the aforesaid provisions of Qanoon-e-Shahadat Order or for that matter under Section 151 CPC such applications cannot be granted nor anyone could be summoned or directed to produce documents in this manner. Learned Counsel for the Defendants has rightly relied upon the observation in the case of ***Rana Mamoon Rasheed*** supra which is a Division Bench judgment of this Court and fully answers the issue. First the Court has to form an opinion on the basis of material and evidence that in the facts and circumstances of the case, it is necessary

to take opinion of the hand writing expert, and only then the matter can be referred. It is not that any party to the proceedings, to substantiate its case makes such an application without having anything in support and asks the Court to indulge into this factual dispute on behalf of the said party. Moreover, the opinion of hand writing expert is only a supporting exercise and is not always binding on the Court, whereas, the matter even then has to be decided on the basis of evidence led by the party.

Notwithstanding, even otherwise, there are specific provisions under Order 11 CPC for discovery and inspection and the Plaintiff has not opted for any such exercise and has directly come before this Court through listed applications for calling and summoning the Defendants to give their signatures as well as thumb impressions and so also certain documents. This in my view cannot be granted by the Court as prayed.

In view of such position, by means of a short order in the earlier part of the day, both these applications were dismissed. These are the reasons thereof.

J U D G E

ARSHAD/