

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD

R. A No.13 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of CMA-114/2018

01.03.2018

Mr. Bilawal Ali Ghunio, Advocate for applicant
Mr. Wali Muhammad Jamari, Assistant A.G

ORDER

AGHA FAISAL, J: The subject revision application has impugned the order dated 28.10.2017 (hereinafter referred to as the “Impugned Order”), passed by the learned VIIIth Additional District Judge, Hyderabad (hereinafter referred to as the “Trial Court”).

The content of the Impugned Order is reproduced herein below:

“By this order, I tend to dispose of an application U/O. 13 Rule 1&2 C.P.C. R/W Section 151 C.P.C filed by learned counsel for plaintiff with a prayer to allow the plaintiff to produce the documents in his evidence.

2. *Notice of this application was given to other side, to which, learned counsel for defendant filed objections in the shape of counter affidavit.*

3. *Learned counsel for plaintiff argued that documents sought to be produced, are essential and proper and will assist this Court to reach at just and proper decision of the case. He argued that original cheques alongwith other relevant documents were misplaced and despite diligent efforts, could not be trace out, hence, plaintiff tried to lodge NC report but same could not be lodged. He further argued that Photostat copies is always secondary evidence and if said documents are produced on record, the same shall not cause any harm to the case of defendant as he has great opportunity of cross examination. He further argued that if instant application is not allowed, plaintiff will suffer irreparable loss and serious injury.*

4. *On the other hand, learned counsel for defendant argued that plea of plaintiff is false and documents sought to be produced in evidence, are not essential nor necessary being Photostat copies of documents and same are not admissible in the law. He further argued that no reason is shown to allow the instant application, therefore, same may be dismissed.*

5. *I have considered the submissions of learned counsel for respective sides, I also gone through the material available on record and relevant law.*

6. *Record shows that the documents sought to be produced are very proper and essential for just and proper decision of the case and it will not harmful for defendant, if same are brought on record as defendant shall have full opportunity to question the said documents during cross examination. Record further shows that the above documents are relevant documents and will also assist the Court to decide the actual controversy, I, therefore, allow the instant application as prayed, with no order as to costs.”*

2. The learned Counsel for the applicant states that by virtue of the Impugned Order the learned Trial Court has allowed photocopies of documents to be produced, when in fact the same was not permissible under the law.

3. The learned Counsel further states that it was incumbent upon the learned Trial Court to confine the ambit of documentary evidence to originals or certified copies thereof.

4. The learned Counsel relies on the case of *SARDAR KHAN BAHADAR KHAN V/S. RETURNING OFFICER, CONSTITUENCY LA-18 POONCH-2 CIVIL JUDGE, HAJIRA, AK & 02 OTHERS*, reported as 2003 MLD 284, and draws attention of the Court to the following passage:

“The words ‘certified copies’ applied in the drafting of Article 74 of Qanun-e-Shahdat, 1984, must first be obtained as required by Article 87 of Qanun-e-Shahadat, 1984, and if such copies are not available only, then the

other type of evidence can be referred to prove such fact which could not be proved in the absence of original or certified copy. In the present case the original certificate, according to the contention of the appellant, has been misplaced and he is not in possession of the same or its certified copy. He has obtained the aforementioned documents to prove that he is Matriculate but unfortunately these documents are not certified as true by the officer who has issued them or in whose custody the original was entrusted and lost, therefore, in the absence of these ingredients we are unable to accept these documents in evidence and certify that these are true. The appellant may seek the declaration to the effect from the Court of Competent Jurisdiction if so advised.”

5. The learned Counsel states that in view of the aforesaid law the Impugned Order may be set aside.
6. In response, the learned A.A.G has argued that the Impugned Order has been rightly rendered as the same is in due conformity with the law.
7. The learned A.A.G further states that it is apparent from a cursory perusal of the Impugned Order that the same has been delivered keeping in view the interests of justice and to ensure that no prejudice is caused to either of the parties.
8. This Court has heard the arguments of the learned Counsel and has reviewed of the Impugned Order in minute detail.
9. It is the considered view of this Court that unmerited exclusion of material documentation from evidence may lead to a miscarriage of justice.
10. It is further observed that the petitioner would have ample opportunity to controvert the documentation during evidence, where

the burden of proving the same lies upon the plaintiff therein (and not upon the present petitioner who is a defendant in the said suit).

11. The aforesaid view is fortified by the judgment in the case of *ALLAMA MUHAMMAD INAYATULLAH V/S. GHULAM RASOOL & OTHERS*, reported as *1994 MLD 1984*, wherein it has been held as follows:

“It, therefore, cannot be said that the petitioner will be taken by surprise if the document is allowed to be produced in evidence which document is the only proper evidence to be produced in order to determine the matter in issue effectively. It is true that it is not a public document yet authenticity thereof can be seen at the time when the same is produced in evidence and not prior thereto particularly when a photocopy thereof is already on the record. I have seen the order passed by the learned trial Court. Valid and lawful reasons have been taken into consideration while exercising jurisdiction in the matter. Discretionary orders passed by the learned trial Court and upheld by a revisional Court ordinarily cannot be challenged in writ petition unless and until it can be shown that the same are either whimsical, fanciful and arbitrary. Even otherwise the interim orders cannot be allowed to be challenged in writ petition inasmuch as the said orders are challengeable at the time of filing of an appeal against the final judgment and decree. See case of Ghulam Hussain and another v. Malik Shahbaz Khan and another (1985 SCMR 1925). All the procedures are meant to be used in aid of justice and not for enterpassing the litigants. Merely because the document was not appended with the plaint cannot be a ground for refusing production thereof subsequently. See case Manager, Jammu and Kashmir, State Property in Pakistan v. Khuda Yar and another (PLD 1975 SC 2112). Mere delay in disposal of the case is not a ground for refusing additional evidence. See case Rehman Dad and another v. Major Raja Sajawal Khan, etc. (1976 SCMR 350), wherein an order of refusal of appointment of local commissioner on the ground of delay was set aside.

Resultantly, I see no force in this writ petition and the same is, therefore, dismissed in limine.”

12. It is further maintained that mere technicalities cannot be allowed to defeat the basic principles of justice. Reliance in regard hereof is placed upon the judgment of the august Supreme Court of Pakistan in the case of *MANAGER, JAMMU & KASHMIR, STATE PROPERTY IN PAKISTAN V/S. KHUDA YAR & ANOTHER*, reported as *PLD 1975 Supreme Court 678*, wherein it was maintained as follows:

“The proposition could hardly be disputed that the principal object behind all legal formalities is to safeguard the paramount interest of justice. In fact while considering the importance of legal technicalities and rules of procedure in the administration of justice, it is inevitable to recall the various evolutionary stages in the transition from justice without law of primitive society to justice in accordance with law of modern society and the conflict between equity and law in judicial history. It cannot be denied that legal precepts were advised with a view to impart certainty, consistency and uniformity to administration of justice and to secure it against arbitrariness, errors of individual judgment and mala fide. Over a period of time this development of codes and rules led to the evolution of what is called “jurisprudence of Conception” a system of logical deduction from fixed premises. In order to avoid the rigidity and hardship of ultra formalism recourse is had to principle of equitable application and interpretation of legal precepts and conferment of judicial discretion on the Courts as envisaged by Order XLI, rule 33 of the C.P.C in regard to Constitutional power of this Court to do complete justice in all matters. These two provisions read together lead to the irreparable conclusion that mere technicalities unless offering an insurmountable hurdle should not be allowed to defeat the ends of justice.”

13. It has been gleaned from the judgment in the case of *MIRZA ALI KHAN V/S. MST. SHAHIDA PARVEEN & OTHERS*, reported as 1992 SCMR 2112, that a Court may not act in a mechanical manner and that orders may be passed in due contemplation of their probative and prejudicial effects.

14. It is the view of this Court that exclusion of any evidence, weightage notwithstanding, may not serve the interests of justice. The Impugned Order clearly states that the documents sought to be produced are proper and essential for the adjudication of the case and it will not be harmful to the defendant if the same are brought on record as the defendants shall have complete opportunity to question the same during the cross examination.

15. The Impugned Order further delineates the assessment of the learned trial Judge that the subject documents are relevant in order to assist the learned Trial Court with the adjudication of the controversy.

16. This Court concurs with the observation of the learned Trial Court, as prescribed in the Impugned Order, that the veracity and weightage of the documents shall remain open to challenge by the applicant during the stage of evidence before the Trial Court.

17. In view of the foregoing, it is found that the Impugned Order is in due consonance with the settled principles of law, and merits no interference under the provisions of Section 115 CPC, and therefore the same is hereby upheld.

18. The subject civil revision application, alongwith the application/s listed therein, is hereby dismissed.

19. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

20. The office is directed to communicate this order to the learned Trial Court for necessary reference and record.

Announced in open Court.

JUDGE

Shahid