

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

C.P No.D-3004 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA 12035/17
2. For hearing of main case

13.02.2020

Mr. Raja H. R Naurang advocate for petitioners.
Mr. Saddam Hussain Baloch advocate for respondent No.1.
Mr. Allah Bachayo Soomro, A.A.G.

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This constitutional petition is against the concurrent findings of two courts below. The trial court allowed the application under Article 74 Qanoon-e-Shahdat Order, 1984, for production of secondary evidence, whereas, the revisional court set-aside the order and dismissed the application. The primary consideration for the revisional court was that there was no effort made in locating the original document and that a vague affidavit in support of the application was filed. The secondary evidence can only be permitted if the loss of the original is proved or if it is shown to be in possession of a person who is not subject to the process of the court; where the person in whose possession the original documents in question was supposed to be given a highly vague statement which was insufficient to prove the loss of the original document, court, before allowing secondary evidence, should have insisted that the effort be made to trace the original documents and to produce the same. No such effort seems to have been made in the instant case and even the affidavit in support of the application is not sufficient. It is contended that the alleged agreement was executed in presence of witnesses who have also supported the version and executed a fresh statement. The evidence of those witnesses could have been recorded if it is so desired by the petitioners. No interference, as such, is required. The petition is dismissed along with listed application.

JUDGE

JUDGE

