

# IN THE HIGH COURT OF SINDH KARACHI

## Suit No. 362 of 2015

[Wakeel Akhtar versus Shahzad Alam]

Plaintiff : Wakeel Akhtar through M/s. Syed Ansar Hussain and Farukh Abrar Khan, Advocates.

Defendant : Shahzad Alam through Mr. Abbad-ul-Hassnain, Advocate.

Date of hearing : 16-09-2019

Date of order : 29-11-2019

## ORDER

**Adnan Iqbal Chaudhry J.** - By CMA No. 16741/2018 the Plaintiff prays for a direction to the Defendant under sub-Article (2) of Article 84 of Qanun-e-Shahadat Order, 1984 to write certain words in Urdu so as to compare his hand-writing with the one that he allegedly made on the *Iqrarnama* which is a document filed with the plaint as Annexure-A/4 and produced by the Plaintiff in his evidence as Exhibit-26. Such application has been moved by the Plaintiff at the stage of the Defendant's evidence.

2. The *Iqrarnama*, dated 19-01-2015, is in typed Urdu and states that the Defendant acknowledges that he has obtained a certain loan from his brother, the Plaintiff; that in consideration thereof the Defendant delivered possession of the second floor of his house to the Plaintiff for his residence; that the Defendant will return the loan within two years,

and till such time the Plaintiff may continue to live at the second floor of the Defendant's house. The *Iqrarnama* also bears a hand-written sentence in Urdu to add to its clauses. Per the Plaintiff, such handwriting is of the Defendant, and it is this handwriting that the Plaintiff seeks to compare. The *Iqrarnama* is said to have been signed by the Plaintiff, the Defendant and by two attesting witnesses.

3. In his written statement, the Defendant had denied the *Iqrarnama* and it is his case that the same is a document fabricated by the Plaintiff. Thus, learned counsel for the Plaintiff submitted that by way of the listed application, the Plaintiff seeks to prove the execution of the *Iqrarnama* by the Defendant by proving under Article 84 of the Qanun-e-Shahadat Order, 1984 that the handwritten clause thereon was written by the Defendant. I note here that the Plaintiff does not seek to compare the signature that he alleges was made by the Defendant on the *Iqrarnama*.

4. Learned counsel for the Defendant emphasized that the application has been made only to stall the evidence as the *Iqrarnama* is *ex-facie* bogus. Learned counsel for the Defendant pointed out to the fact that when it was the Plaintiff's own case that he (Plaintiff) had signed the *Iqrarnama* under duress from the Defendant; then the original of such a document should have been with the Defendant, not with the Plaintiff who had gone on to produce the original in evidence. He then submitted that the burden to prove the *Iqrarnama* was on the Plaintiff; that the Plaintiff did not discharge such burden while leading his evidence and has moved the subject application during the Defendant's

evidence; that the Plaintiff had never even examined the attesting witnesses to the alleged *Iqrarnama* and is now trying to fill in the lacunae during the Defendant's evidence.

5. Heard the learned counsel and perused the relevant record.

In terms of Article 117 of the Qanun-e-Shahadat Order, 1984, the burden to prove the *Iqrarnama* is on the Plaintiff. Since the Defendant denies the *Iqrarnama*, Article 78 of the Qanun-e-Shahadat Order requires the Plaintiff to prove that it was executed by the Defendant. Of the modes of such proof, Articles 79, 80 and to 84 of the Qanun-e-Shahadat Order, 1984 provide as follows:

**“79. Proof of execution of document required by law to be attested:**

If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

**80. Proof where no attesting witness found.** If no such attesting witness can be found, it must be proved that the witnesses have either died, or cannot be found and that the document was executed by the person who purports to have done so.

**84. Comparison of signature, writing or seal with others admitted or proved.** (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be

compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This Article applies also, with any necessary modifications, to finger-impressions."

6. Since the *Iqrarnama* was a document relating to a financial obligation, it was required by Article 17(2)(a) of the Qanun-e-Shahadat Order to be attested by witnesses, and it was so attested by two witnesses. Therefore, the provision of Article 79 of the Qanun-e-Shahadat Order is applicable to the *Iqrarnama* which provision mandates that "it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence."

7. It was not denied by the Plaintiff's counsel that while leading evidence the Plaintiff did not call and examine the attesting witnesses to the *Iqrarnama*. It is not the case of the Plaintiff that his case fell in any of the exceptions contained in Article 79 of the Qanun-e-Shahadat Order to the calling of attesting witnesses; nor is it contended by the Plaintiff that he has lead evidence under Article 80 of the Qanun-e-Shahadat Order to prove that the attesting witnesses have died or cannot be found. While Article 84 of the Qanun-e-Shahadat Order provides a mode for proving execution of a document by comparison of signature or hand-writing, that is an additional mode and not a

substitute of or an alternate to the mandatory provision of Article 79 of the Qanun-e-Shahadat Order. In any case, the mode of proof by way of Article 84 is not the most desirable of modes in that, the signature and hand-writing of a person may vary with time and age; or a person called upon under sub-Article (2) of Article 84 to give a specimen of his signature or hand-writing may feign the same to defeat the comparison.

8. In other words, when the Plaintiff has not exhausted the mandatory requirements of Articles 79 and 80 of the Qanun-e-Shahadat Order, 1984 to prove the Defendant's execution of the *Iqrarnama* by calling the attesting witnesses, I am not inclined to exercise powers under sub-Article (2) of Article 84 of the Qanun-e-Shahadat Order, 1984 to order for a comparison of the Defendant's handwriting. Resultantly, CMA No. 16741 of 2018 is dismissed.

**JUDGE**

Karachi  
Dated: 29-11-2019