

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**SUIT No. 142 / 1996**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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**Plaintiff:** Kohinoor Tobacco Company (Pvt.) Ltd.  
through Mr. Mr. Muhammad Haseeb Jamali along  
with Mr. Saad Siddiqui Advocates

**Defendant:** S. M. Idrees Allawala through Mr. Munir A. Malik  
along with Ch. Atif Rafiq Advocates

**For hearing of CMA No. 14479/ 2017**

**Date of hearing:** 28.02.2018.

**Date of Order:** 28.02.2018.

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1. This is an application under Order XIII Rule 2 CPC for production of documents so stated in the application, in evidence. Mr. Munir A. Malik, learned Counsel for the Defendant submits that the documents at Serial No. 1 to 9 of the application were though not brought in evidence earlier, but are necessary documents for proper adjudication of the case and most of them are official documents. He further submits that insofar as documents at serial No. 10 to 23 are concerned, they have already been brought in evidence through official Defendants and have been exhibited, whereas, the Defendant only wants to produce their originals. He submits that earlier similar sought of application was filed by the Plaintiff which was allowed with consent and therefore, this application may also be allowed. Without prejudice he further submits that production of these documents may be permitted, whereas, the defendant may raise any objection on their admissibility at the time of final arguments which can always be decided by the Court.

2. Conversely, Mr. Haseeb Jamali, learned Counsel for the Plaintiff has opposed the grant of this application on the ground that it has been filed at a very belated stage when evidence has been completed, whereas, the documents at serial No. 10 to 23 in the application have already been exhibited, therefore, no useful purpose would be served. He further contends that Annexure "N" to this application at serial No.15 is a forged document and therefore it cannot be produced in evidence. Insofar as documents at serial No. 1 to 9 are concerned, learned Counsel submits that neither they have been authored by the Defendant nor addressed to him, whereas, no proper and good cause has been shown that as to why they were earlier not brought on record. According to the learned Counsel in terms of Order XIII Rule 2 CPC, for grant of such an application a proper and justifiable cause has to be shown which the Defendant has failed. In support he has relied upon ***Kohinoor Tobacco Company (Pvt.) Ltd. V. S. M. Idrees Allawala (2013 CLC 1789), Muhammad Umar Mirza V. Waris Iqbal and others (PLD 1990 SC 964) and Sher Baz Khan and others V. Mst. Malkani Sahibzadi Tiwana and others (PLD 2003 SC 849).***

3 While exercising right of rebuttal, Chaudhry Atif Rafiq, who also appears for the Defendant and is assisting the Senior Counsel, submits that on the one hand the Plaintiff's Counsel admits that documents at serial No. 10 to 23 have already been exhibited and in the same breath he objects to Annexure "N" as being forged which stance appears to be contradictory. He further submits that at the very outset, it may be recorded that all these documents could only be taken on record and admitted after satisfaction of the Court at the time of final arguments and in such circumstances, there is no reason to oppose this application. Learned Counsel has also referred to the written statement

and submits that there is enough disclosure in respect of the documents at serial No. 1 to 9; hence the objection of learned Counsel for the Plaintiff is not tenable.

4. I have heard both the learned Counsel and perused the record. The provision in respect of production of documents is governed by Order XIII C.P.C. and Rule (1) thereof states that documentary evidence is to be produced at the first hearing and reads as under:-

“1. Documentary evidence to be produced at first hearing. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs

<sup>1</sup>[(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be, denial.]”

5. Whereas, Rule (2) *ibid* provides a situation and effect for non-production of such documents and reads as under:-

“2. Effect of non-production of documents. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless **“good cause”** is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.” (Emphasis supplied)”

6. Perusal of the aforesaid rule (i.e.Rule-2) reflects that no documentary evidence in the possession of any party, which should have been, but has not been produced in accordance with Rule (1), shall be received at any subsequent stage of the proceedings unless **“good cause”** is shown to the satisfaction of the Court for the non-production thereof, and the Court receiving such evidence shall record the reasons for so doing. This provision in fact caters a situation,

wherein, a party to a Suit has filed such documents before the Court and subsequently, wants to bring and add some other documents, which initially were not provided in the list of documents filed in terms of Rule (1) hereinabove. Rule (2) in fact enables the Court to even consider the documents, which though were not initially in the list of documents filed before the Court, but are being brought subsequently on record through an application and the Court is empowered if any **“good cause”** is shown to its satisfaction to allow and bring on record such documents. This in fact provides a wider discretion to the Court to even consider such documents, which have not been initially mentioned in the list. Insofar as the present case is concerned in this matter though the evidence is at advance stage, however, the peculiar facts of this case are to be kept in mind. Earlier the plaintiff had twice filed such application, and one occasion it was allowed with consent of the defendant and on the second occasion the Court had passed an order to that effect. In my view the reading of Order XIII Rules 1 & 2 CPC in juxtaposition, appears to be directory and not mandatory so as to Non-Suit a party by refusing to produce documents and adducing its evidence. It is only that a party seeking permission under this Rule has to show **“good cause”** to the satisfaction of the Court. It in fact empowers the Court to allow consideration of documents even during the evidence or even after the evidence has been completed. The law in this regard is very much settled as it is the consistent view of the Hon’ble Supreme Court as well as this Court in that the provision of Order XIII Rule 2 is to be construed liberally, and delay in producing documents by itself is not a good ground for refusal. Whereas, on production of such documents, the aggrieved / opposing party is well

within its own right to question those documents, its admissibility as well as cross examine the witnesses who produces them.

7. Though where rules of exclusion apply and the documents cannot be filed without leave of the Court, that leave should not be ordinarily refused, however, it would be erroneous to read this as implying that there is no discretion left with the Court. The Court has a discretion which must be allowed to be exercised in each case in the light of peculiar facts of the case before the Court. It is also of pivotal importance to note that Order XIII Rule (2) is an exception to Rule (1) *ibid*, and as discussed hereinabove, it is to be liberally construed in that *the permission to file documents after hearing in a case has commenced should be granted as an exception, rather than as a rule, but not so if hearing has not commenced when provision of Order XIII Rule (2) CPC, should be liberally construed.* [See **LIYAS MORTINE & Associates (Private) Limited, Vs. Muhammad Amin Lakhani (1999 MLD 3018)**].

8. It further appears that in this matter earlier a somewhat similar application was filed by the Plaintiff which was allowed by the Court in the case of Kohinoor Tobacco Company (Pvt.) Ltd. (supra) and in that case the then Counsel for Defendant had relied upon the very two cases of Muhammad Umar Mirza (Supra) and Sher Baz Khan (Supra) on which the learned Counsel for the Plaintiff now relies upon. It is very surprising that now the Counsel for the Plaintiff is taking shelter in these very two Judgments which were earlier cited in the case of Kohinoor Tobacco Company (Pvt.) Ltd. (Supra) on behalf of the plaintiff and were distinguished at Para 9 of the said case while allowing the application.

It further appears that insofar as documents at serial No. 11 to 23 are concerned, they already stand exhibited through official

Defendant's evidence and it is only the originals which the Defendant wants to bring on record as admittedly they were never in possession of the officials but have been produced in support of their case. In such circumstances, there appears to be no justifiable reason to refuse production of these documents in the evidence, notwithstanding the fact that the Defendant's evidence has been completed. Insofar as objection to Annexure "N" at serial No.15 is concerned, again I may observe that the same also stands exhibited hence, no allegation regarding the same being forged or tempered with is to be considered at this stage of the proceedings as it has been frankly conceded by the learned Counsel for the Defendant that all these documents may be allowed to be produced however, subject to the final decision of the Court regarding their admissibility and or otherwise.

9. Insofar as the documents at serial No. 1 to 10 are concerned, mostly appear to be pertaining to official record. On perusal it reflects that Annexure "A" is a Letter of Karachi Development Authority in the name of Eastern Tobacco Company, Annexure "B" is again a Letter of Karachi Development Authority in the name of Eastern Tobacco Company, Annexure "C" is Gazette Notification of the Government of Bangladesh, Annexure "D" is a Letter of Karachi Building Control Authority, showing owner's name as S.M. Idrees Allahwala, Annexure "E" is a Regularization Plan for Eastern Tobacco Company, Annexure "F" is a Receipt of KBCA in the name of Eastern Tobacco Company, Annexure "G" is a Letter of the Office of Assistant Collector Central Excise and Land Customs Landhi Division, Karachi addressed to Ahmed Industries, which according to the Defendant was their tenant, Annexure "H-1" is issued by a Construction Company in respect of workis on certain godowns, Annexure "H-2" is a Receipts. Similarly

Annexure “I-1” onwards are also Receipts, Annexure “J” is again a Letter of Karachi Development Authority issued to Eastern Tobacco Company, Annexure “K” is a Letter of some Advocate addressed to Director Housing Management, Karachi Development Authority in respect of Eastern Tobacco Company, Annexure “L” is again a Letter of Karachi Development Authority, addressed to Eastern Tobacco Company and lastly Annexure “M” is again a Regularization and Completion Plan issued by Controller of Buildings to Eastern Tobacco Company. Therefore, apparently without prejudice to the case of the Plaintiff these documents do not appear to be out of context and entirely immaterial for the present purposes so as to discard them and refuse permission to produce the same in evidence subject to their final admissibility at the stage of final arguments. Refusal to do so would not serve any good purpose except to prejudice the case of the Defendant. It may further be noted that in the case of Kohinoor Tobacco Company (Pvt.) Ltd. (Supra) relied upon by the learned Counsel for the Plaintiff at Para 10 a very important observation has been made by the Court and this answers each and every objection so raised by the learned Counsel for the Plaintiff and reads as under:-

“10. At this juncture I would like to quote a landmark judgment of Hon’ble Supreme Court in the case of Imtiaz Ahmed v. Ghulam Ali reported in PLD 1963 SC 382 in which his lordship B.Z. Kaikaus J., as he then was, held that proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. The English system of administration of justice on which our own is based, may be to a certain extent technical but we are not to take from that system its defects. Any system which by giving effect to the form and not to the substance defeats substantive right is defective to that extent. The ideal must always be a system that gives to every person what is his.”

10. In view of hereinabove facts and circumstances of this case, the application is allowed. The documents stated in the application are

permitted to be brought in evidence on behalf of defendant; however, the production of all these documents would be subject to final decision of the Court at the time of final arguments as to their admissibility and or otherwise. Application stands allowed as above.

**J U D G E**

ARSHAD/