

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.867 of 2010

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.10140/2012.
2. For hearing of CMA No.464/2013.
3. For hearing of CMA No.9729/2013.
4. For examination of Parties/settlement of Issues.

23.01.2018.

Mr. Mian Mushtaque Ahmed, advocate for the
Plaintiffs.

Mr. Agha Zafar Ahmed, advocate for the Defendants.

1. **CMA No.10140/2012:** This is an application filed on behalf of Defendants No.1 to 15 and 19 under Order XI Rule 14, 16, 18 and 21 CPC seeking orders for production of the originals of the documents so mentioned in the Application for inspection by the said Defendants.

Learned Counsel for the Defendants submits that in the affidavit-in-rejoinder to the stay application, the Plaintiffs have stated that certain amount was received back by the Defendants in lieu of transfer of shares and had relied upon Annexures "B" and "C" to the said Rejoinder. Learned Counsel submits that both these documents purportedly issued by the Defendants are forged and fabricated, therefore, orders be passed for production of the originals for inspection.

On the other hand, learned Counsel for the Plaintiffs submits that when such affidavit-in-rejoinder was filed these two

documents were though available; but thereafter they have been stolen by the Defendants as stated in the counter affidavit. He further submits that those documents are no more available and the originals are with the aforesaid Defendants.

I have heard both the learned Counsel for the Parties and perused the record. Insofar as the case of the Defendants is concerned, admittedly, these documents were not relied upon by the Plaintiffs in its Plaint or supporting affidavit(s) but have come on record through affidavit-in-rejoinder in response to the counter affidavit of the Defendants to the stay application.

Provisions of Order XI CPC deals with discovery and inspection of the documents and Rule 14 ibid deals with production of the documents and provides that it shall be lawful for the Court at any time during pendency of any Suit to order production by any Party thereto, upon Oath, of such documents, which are in possession or power relating to any matter in question in the Suit and that once such documents are produced they shall be dealt with in such a manner as it appears just and proper. Rule 15 provides for entitlement of a party to seek inspection and production and issuance of a notice to that effect. Rule 16 provides for issuance of notice to produce such documents. In this case such notice and requirement apparently seems to have been complied with by the Defendants, but documents have not been presented, hence listed application.

Rule 18 is the most important as it deals with the powers of the Court to order production and inspection on an application. It has two parts. Sub-Rule (1) deals with documents which are mentioned or detailed in the pleadings and or affidavits of the parties, whereas, Sub-Rule (2) deals with a situation when the documents of which inspection and or production is being sought, are other than those referred to in the pleadings and or affidavits. The document(s) demanded on behalf of the defendants is the one coming out of Affidavit in Rejoinder, therefore, this case is covered under Order XI Rule 18(1) CPC, which deals with the situation where the party served with notice under Rule 15 *ibid*, omits to give such notice of a time for inspection elsewhere than at the office of his pleader, and the Court may, on the application of the party desiring it, order for inspection in such place and manner as it may think fit, whereas, it is provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for *disposing fairly* of the Suit or for *saving costs*.

Insofar as the present application is concerned, firstly the Plaintiffs have stated that at the current moment such documents are not in their power or possession. Therefore before exercising such power the Court must satisfy that such documents are in existence. From the Counter Affidavit to this application, it appears that Plaintiff has denied that presently they are in possession of these documents. Perhaps the matter ends here, as the Plaintiff has though relied upon these documents in the Rejoinder Affidavit, but now they plead that its original is not available with them. It is

needless to observe that any deliberate refusal from inspection of such a document, resultantly, justifies a presumption that the document would have supported the other party's case, whereas, even otherwise, under Rule 15 ibid, further reliance on such a document in evidence is also precluded, unless so authorized by the Court.

Coming to the proviso to Sub Rule (1) it would suffice to observe that it vests certain discretion upon the Court that even if such document is part of the pleadings, the exercise of such power is to be done justly, fairly and only if it is expedient to do so. But not necessarily, as contended. The discretion in such matters ought to be exercised with restraint and caution. Mere summoning request is not enough to issue any directions for production and inspection. The relevancy of the document is also pivotal, whereas, the desire of one party as against the other must not be to harass or intimidate the other.

After going through the contents of the listed application as well as the documents so desired, I am of the view that the Defendants' case does not merit consideration under the Provisions of Order XI Rule 18(1) CPC inasmuch as the document do not seem to be necessary for disposing of the Suit justly and fairly, and this Court must exercise its discretion not to entertain this application. Further, they are presently not available or in the power of the Plaintiffs, therefore, request so made cannot be granted even otherwise. Moreover, the matter is yet to be taken up

for evidence, and after settlement of issues the parties are required to file documents in original on which they intend to rely and lead evidence. If the Plaintiff fails to mention such document for its evidence, then the matter would end, whereas, if any reliance is placed on any such document, then its admissibility can be questioned by Defendants, and the matter would then be decided by the Court in accordance with law. The Defendants are at liberty to contest and agitate such issue at the time of leading of evidence by the Parties and may also confront the Plaintiffs to that effect. Accordingly, application at Sr. No.1 being CMA No.10140/2012 is hereby dismissed.

2 to 4. Adjourned.

JUDGE

MUBASHIR