

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C.P. No. **S-415** of **2017**

Petitioner : Zeeshan Alam, through Mr. Kamran  
Alam, Advocate.

Respondents : Mst. Nida Afsheen and Master Mohid.  
No.1 & 2. Respondent No.1, present in person.

Respondent No.3 : IXth Family Judge, Karachi Central  
(nemo)

Date of Hearing : 22.03.2017

Date of Order : 31.03.2017

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**ORDER**

**ZAFAR AHMED RAJPUT, J:** This Constitutional Petition is directed against the order dated 30.01.2017, passed in Family Suit No. 529 of 2015, whereby the learned Family Judge, Karachi-Central allowed application filed by the respondent No.1 / plaintiff under Section 7(2) of the Family Court Act, 1964 (hereinafter referred to as “**the Act of 1964**”) for the production of documents in evidence.

2. The brief facts of the case are that the respondent No.1 herein filed aforesaid Family Suit for dissolution of marriage, recovery of dower, dowry articles and maintenance under Section 7 of the Act of 1964 against the petitioner / defendant on 16.03.2015. On being served, the petitioner filed written statement and thereafter the respondent No.1 filed her affidavit-in-evidence and produced (i) Nikahnama, (ii) List of dowry articles and (iii) Fatwa of Dar-ul-Ifta, Jamiat-ul-Uloom-ul-Islamia, Binori Town, Karachi dated 08.12.2013. Naeem-ul-Hassan Abbasi, the father of the respondent No.1, who was shown as her witnesses in the schedule, also filed his affidavit-in-evidence alongwith additional documents. Thereafter, the

respondent No.1 also filed an application under Section 7(2) of the Act of 1964 for permitting her to produce the following documents:-

- (i) Four receipts of dowry articles (PW-1/1 to PW-1/4)
- (ii) Copy of medical bills and receipts for treatment of minor Muhammad Mohid (PW-1/7 to PW-1/37).
- (iii) Copies of receipts for purchasing of milk and pampers etc. (PW-1/38 to PW-1/58).
- (iv) Copy of contact employment latest version (PW-1/59)
- (v) Copy of Fatwa on message of defendant (PW-1/6).

The learned trial Court after hearing both the parties allowed the said application vide impugned order.

**3.** The learned counsel for the petitioner has submitted that under Section 7(3)(i) of the Act of 1964 the plaintiff was required to produce in Court alongwith the plaint the copy of the documents in his possession or power and under sub-section (3)(ii) ibid when the plaintiff relies on any other document(s) not in his possession or power, he should enter such document(s) in the list appended to the plaint by assigning reason of relevancy of the document(s) to the claim in the plaint. He has further submitted that the trial Court without going through the provisions of Section 7(2)(i) of the Act of 1964 passed the impugned order, which is without lawful authority as no jurisdiction has been assigned to the Family Court under the Act of 1964 to accept the documents which have neither been produced with the plaint nor relied upon by the plaintiff; as such, the impugned order being bad in law is liable to set aside.

**4.** On the other hand, the respondent No.1, who is appearing in person, has contended that the documents sought to be produced, in the list of document annexed with the application under Section 7(2) of the Act of

1964, were supplied to her previous counsel but the same were not annexed by him with the plaint and when this fact came into her knowledge she sought permission for the production of the same, which was accordingly granted by the learned trial Court.

5. I have heard the learned counsel for the petitioner and respondent No.1 in person as well as perused the material available on record.

6. It appears that the respondent No.1 had attached with her plaint the copy of Nikahnama, list of dowry articles and Fatwa dated 08.12.2013 as per requirement of Section 7(3)(i) of the Act of 1964; however, she did not annex copy of other documents, regarding which permission was sought for production in application under Section 7(2) of the Act, 1964 on the ground that the same were not annexed by her previous counsel with the plaint. Perusal of the said documents shows that only the documents annexed as “PW-1/1 to PW-1/7, namely, four receipts of dowry articles, copy of mobile message from the petitioner and copy of fatwa on message of petitioner and one medical bill of minor Muhammad Mohid bear dates up to 19.02.2015, while she filed aforesaid suit on 16.03.2015 and rest of the documents marked as PW-1/8 to PW-1/58 i.e. medical bills of minor Muhammad Mohid, copies of receipt of milk and diapers bear the dates after filing of the suit while the documents PW-1/59 is the copy of contract employment latest version of the petitioner dated 28.07.2015; as such, only the documents marked as PW-1/1 to PW-1/7 and PW-1/59 appears to be relevant with the claim of the respondent No.1.

7. It may also be observed that documents PW-1/59 is the copy of contract employment, which was even not conceived at the time of filing of suit by the respondent No.1; therefore, the same could not have been relied upon by her at that time.

8. No doubt the provisions of Section 7(3) of the Act of 1964 provide that the plaintiff should produce copy of all documents in his possession alongwith plaint but where such situation arises in which due to inadvertent mistake of the counsel the plaintiff fails to attach with the plaint the documents in his possession, the Court is competent to pass any order in the interest of justice looking into the circumstances of the case. Under order XIII, rule 2 C.P.C. a civil Court in such circumstances is competent to receive document at any subsequent stage of the proceedings, on showing good cause to the satisfaction of the Court, for non-production thereof in accordance with the requirements of rule 1 ibid. No doubt, the provisions of C.P.C (except Section 10 and 11) have not been made applicable to proceedings before any Family Court in view of Section 17 of the Act of 1964, but it may be observed that the Family Court is seized of proceedings of a civil nature and it is now well settled principles of law that even if the C.P.C. is not attracted by its own force in any procedural matter before a Court seized of proceedings of a civil nature, the equitable principles underlying the provisions of C.P.C. can be invoked in such proceedings. Hence, on this premises though the provisions of C.P.C. are not directly applicable to the suits covered by Schedule of the Act of 1964, yet principles thereof are being adopted and applied to those proceedings.

9. For the forgoing facts and reasons, instant petition is disposed of by modifying the impugned order to the extent of documents marked as PW-1/1 to PW-1/7 and PW-1/59, which may be produced by the witness of the respondent No.1, namely, Naeem-ul-Hassan Abbasi in his evidence, being relevant to the claim of respondent No.1 in terms of prayer clause of her suit.

JUDGE