

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A No. 349 of 2019

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Hearing (Priority) case.

1. For order on CMA No. 451/2020
2. For hearing of main case.
3. For hearing of CMA No. 3729/2019.

Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Yousuf Ali Sayeed.

G-Force Communication and others.....Appellants

Versus

Dawlance Pakistan and another.....Respondents

11.02.2020

Mr. Yahya Iqbal, Advocate for the Appellants.
Mr. Muhammad Ali Aziz, Advocate for the respondents.

MUHAMMAD ALI MAZHAR, J. The Appellants have brought this High Court Appeal against the Order made on 25.09.2019 by a learned single Judge of this Court in Suit No. 1604 of 2013, which was filed by the Respondents seeking a declaration that they are the owners of the copyright in the items/materials created and produced by the Appellant/Defendants for the Dawlance Group as well as a permanent injunction to restrain them from the use thereof and issuance of a direction for the Appellants to hand over the master copies of all such items/material. On service of summons, the Appellants filed their written statement containing a counterclaim, praying that the Court be pleased to declare that they are the copyright owners of the intellectual property for the slogans “Dawlance Reliable Hai” and “Kyonkay Dawlance Reliable Hai”. The Appellants have also claimed payment of 10% fee/commission said to have accrued in their favour as stipulated in Clause-2 of the Agreement dated 11.11.2006 from November 2006 to December 2013, with further directions being sought against the Respondents to tender all information by which a bill for the fees/commission could be issued for that period.

Learned counsel for the Appellants pointed out that following settlement of the issues, the Appellants moved an Application under Order 11, Rule 14 CPC, being CMA No. 2274 of 2014, seeking that the Respondents be directed to produce their Audited Financial Statements, containing complete data of the entire expenses, sales, advertising expenditure from November 2006 to December 2013, so as to enable the Court to arrive at a just and fair conclusion in the Suit. That Application was heard by the learned single Judge and was dismissed vide the Order dated 25.09.2019. Learned counsel argued that the Application had been dismissed without proper consideration of the material facts and provisions of law.

On the contrary, learned counsel for the Respondents argued that proper issues had already been settled and the burden of proof as regards the issue of whether the Appellants had been paid was on the Respondents and, if required, the relevant documents would be produced by the Respondents at the stage of evidence in order to discharge such burden.

We have considered the arguments of learned counsel and observed that Order 11, Rule 14 CPC unequivocally provides that it is lawful for the Court at any time during the pendency of any suit to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. However, it is clear that the scope for production of documents under this Rule is quite different from that of discovery of documents Order 11, Rule 18 or for answering of interrogatories under Order 11 Rule 11, CPC, and it is the discretion of the Court to order for production of documents that may throw light on the case. In this case the Court has already settled the issues and one such issue in particular is pertinent to the present controversy in as much as it has a direct nexus with the Appellant's counter-claim, that being "Whether the defendants have been paid in accordance with agreement dated 01.11.2006?", in respect of which the burden of proof apparently lies on the Respondents. Accordingly, it would be fit and proper to let the parties adduce their evidence and discharge their burden according to the issues settled.

However, it remains open to the learned trial Court to call for any document, as provided under Order 11 Rule 14, CPC at any stage of the proceeding, in exercise of discretionary power so vested. The Appeal is disposed of in the above terms.

JUDGE

JUDGE

TariqAli/PA