

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 719/2013

Date	Order with Signature(s) of Judge(s)
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1. For hearing of C.M.A. No. 15694/2014.
2. For hearing of C.M.A. No. 15695/2014.

08.02.2021

Mr. Asadullah Soomro, Advocate for the plaintiff.
Mr. Ghulam Muhammad, Advocate for defendants.

1. By means of this application, the defendants seeks setting-aside the order passed on 23.09.2019 on the report of learned Commissioner, whereby the side of the defendants to cross-examine the plaintiff's witness was closed.

Learned counsel for the plaintiff records his no objection for the grant of this application in order to decide the rights of the parties in the light of evidence in accordance with law by providing an opportunity to defendant to cross-examine plaintiff/witnesses.

Accordingly, this application is allowed with the direction to the learned Commissioner to fix a date for the cross examination of the plaintiff's witness by issuing notice/letter to learned counsel for the parties. In case, on the date fixed by the learned Commissioner, the counsel for the defendants faile to appear before the learned Commissioner to cross-examine the plaintiff's witnesses, the learned Commissioner shall be at liberty to close the defendants side to cross-examine plaintiff's witness.

2. This is an application under order XIII, rule 1&2, C.P.C. filed on behalf of defendants for allowing them to file list of documents and list of witnesses.

Learned counsel for the defendants contends that the previous counsel of the defendants failed to file list of documents and list of witnesses after framing of the issues and thereafter he was engaged in this matter in the month of

October, 2019 and filed this application. He also contends that in case his application is not allowed, the defendants shall prejudice seriously.

On the other hand, learned counsel for the plaintiff vehemently opposes this application on the ground that no cogent reason has been given by the defendants either in the application or in the accompanying affidavit for not filing of the lists within stipulated period.

It appears that in this matter issues were framed by this Court on 08.03.2019, in presence of defendant No.3 (Muhammad Farhan), who is also attorney of other defendants and at the time of framing of issues directions were given to the parties by the Court to file list of witness within one week and list of documents within two weeks from the date of order. Besides, Mr. Yousuf Iqbal, Advocate was appointed as Commissioner to record evidence in this matter, who has recorded the evidence of plaintiff's witnesses. The list of documents and copies thereof, so also list of witnesses have not been annexed with the application by the defendant for the examination of the Court. The Court has a discretion to receive documentary evidence at any stage of the proceedings, if sufficient cause is shown for its non-production earlier. The only cause shown by the defendants for not filing list of documents and list of witnesses in compliance of order dated 08.03.2019 is that the previous counsel of the defendants did not file the same. It has not been alleged that the documents which the defendants intend to produce were not in their possession but in possession of their previous counsel; hence, the cause shown by the defendants does not appear 'good cause'. This is not the good cause satisfying the Court for non-filing of the list of documents and list of witnesses; hence this application being devoid of merits is dismissed accordingly.

JUDGE