

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No. 580 of 1995

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Date	Order with signature of Judge
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For cross examination.

28.03.2017.

None present for plaintiff.  
Mr. Mansoor-ul-Arfin, Advocate for defendant.

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Instant suit has been filed by the plaintiff company for recovery of damages for breach of following four contracts entered between the plaintiff and the defendant dated 10.10.1993 and 18.11.1993:

1. Contract No. PER/001 A-/93.94 dated 10.10.1993 for 2500 bales – Shipment: Jan/March, 1994 equally.
2. Contract No. PER/001 B/93.94 dated 10.10.1993 for 2500 bales – Shipment: Jan/March, 1994 equally.
3. Contract No. PER/003 C/93.94 dated 18.11.1993 for 2500 bales – Shipment: Jan/March, 1994 equally.
4. Contract No. PER/004 D/93.94 dated 18.11.1993 for 2500 bales – Shipment: Jan/March, 1994 equally.

It is further claimed that on 04.01.1994 defendant requested the plaintiff to delay nomination of vessels to the end of January stating “as cotton unavailable at present”. The plaintiff accommodated the defendant but the defendant failed to confirm that when consignment would be ready for shipment; that on 03.05.1994 the defendant sent a telex to the plaintiff purporting to unilaterally cancel the contracts allegedly on account of force majeure, hence, cancellation of the contracts is malafide, unlawful and of no legal effect which gives cause of action to the plaintiff to compensate in the sum of US \$449,738.48 as damages.

Thereafter, notices and summons were issued; defendants filed written statement; compliance of Order X CPC was failed and issues have been framed on 07.09.1998, which are that:

1. *Whether the cancellation /termination by the defendant of the four contracts dated 10.10.1993. and 18.11.1993 between the Plaintiff and defendant is legal and valid? If not what is the effect?*

2. *Whether the Defendant is liable to compensate the Plaintiff as claimed in paragraph 10 of the Pliant?*

3. *Relief?*

Thereafter, matter went for evidence but plaintiff failed to examine himself or any witness on his behalf and ultimately his side was closed on 16.02.2017 after providing many opportunities. Since instant suit is for damages with regard to certain amount; it is settled principle of law that for damages plaintiff is required to substantiate his plea by leading evidence, particularly when specific quantum is demanded. Although, plaintiff has deposited many documents but he has failed to examine author of documents to prove their contents as required under Article 78 of Qanoon-e-Shahadat 1999. Besides, it is settled principle of law that when documentary evidence is available on record and that parties are unable to appear in witness box to lead their evidence for production of documents and for proof of the contents, in that eventuality, documentary evidence has no legal value. Under these circumstances instant suit is dismissed by judgment and decree.

SAJID

JUDGE