

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

HCA No. 106/09

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Date

Order with signature of Judge

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1. for katcha peshi.
2. for hg.of CMA 576/09

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29.6.2009

Mr.Aziz A. Munshi, Advocate for appellant.

Mr.Mirza Waqar Hussain, Advocate for Respondent.

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It appears that before the Plaintiff appeared before the Commissioner for recording her evidence after filing affidavit in evidence. She produced certain documents in Examination –in-Chief and also made oral statements which are said to be already stated in the affidavit

in evidence. In the impugned order, while allowing the respondent to cross examine the plaintiff and her witness, the earlier statement made in the Examination-in-Chief has been ordered to be ignored as it was recorded in absence of the respondent. It appears that merely on technicalities the proceedings in the main case have come to a halt.

To cut the controversy short and to allow the Commissioner to proceed with the examination of the witnesses, we are of the view that the statements made in the affidavit in evidence, already filed, shall be treated as statements made in Examination-in-Chief. A separate set of the documents, on which the Plaintiff relies whether original, photocopies or certified, as the case may be, shall be filed by the appellant afresh which shall be treated as annexures to the Affidavit-in-Evidence. Advance copies thereof shall be given to the Respondent. The appellant shall be free to get the documents exhibited when she appears before the Commissioner for recording her evidence on Oath. Thereafter the appellant shall produce the documents in Examination-in-Chief subject to their admissibility and objection, if any, taken by the other side. The Respondent shall then be entitled to cross examine the appellant's witnesses. The Examination-in-Chief so recorded and the documents so produced shall be considered as evidence of the appellant in the matter. The earlier Examination-in-Chief shall not be looked into. The opportunity of cross examination is being accorded and in case the Respondent fails to cross examine the Appellant or her witnesses then appropriate order for closing defendant's side shall be passed by the trial Court. This exercise of recording evidence shall be completed within three months. Learned counsel for the respondent undertakes that he will not seek adjournment when the Appellant Zafrain Iqbal appears for

her examination. The parties are directed to appear before the Commissioner on 7<sup>th</sup> July, 2009 for recording of evidence.

With the above observations, this appeal stands disposed of.

JUDGE

JUDGE