

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.297 of 2018

Byco Petroleum Pakistan Limited
Versus
Pakistan Petroleum Limited

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

Hearing (priority) case

1. For hearing of main case.
2. For hearing of CMA No.2430/2018 (Stay).

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Dated 13.03.2024

Mr. Sameer Tayebaly, Advocate for the Appellant.

Mr. Ijaz Ahmed Zahid, Advocate for the Respondent.

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Muhammad Shafi Siddiqui, J.- The order impugned in this appeal is of 13.08.2018. The controversy raised by the appellant's counsel is in relation to certain documents which, per learned counsel, should not have been produced by the Respondent's witness, as some of them were photocopies. It is claimed that the rights of the appellant will be prejudiced if those documents, without fulfilling the requirement of proving them, would be taken into consideration by the learned single Judge. He then ultimately submits that at least as a preliminary issue the learned single Judge may decide it first before dealing with the merit of the case.

2. On the other hand, Mr. Ijaz Ahmed Zahid, learned counsel for the Respondent has taken us to the history, as originally the evidence was recorded before the commissioner on 28.06.2016 before whom a number of documents were produced. Mr. Ijaz has pointed out that although number of documents were produced but, without prejudice to their (Respondent's) rights, only two documents were objected i.e, documents dated 08.04.2010 and 17.06.2010 which were taken on record; rest of the documents

were not disputed. To end the controversy, learned counsel, while relying on the cases reported as (i) *1988 CLC 1489 [Rehmat Ali and 6 others v. Muhammad Ishaq]* and (ii) *PLD 1968 Supreme Court 140 [Abdullah and 3 others v. Abdul Karim and others]*, submits that this silence and/or not raising objection amounts to admission and proof of documents. The matter on this controversy was then referred to the Court which then recorded examination-in-chief to the extent that the documents were “re-produced” by witness before the learned single Judge himself.

3. It is claimed by Mr. Ijaz that this re-production of documents was in presence of the counsel, who never raised any objection including those two documents in relation to which earlier objections were raised. He submits that necessary notice under Order-XII Rule-8 CPC read with Article-77 of the Qanun-e-Shahadat Order, 1984 was issued. Subsequent to this notice, these copies of the original documents were produced on 23.08.2018, as desired in the notice of February 2018. The cross-examination took place on 29.08.2018 and to the above extent, no objections were raised. It is argued that though the documents were produced by the custodian/ witness, who was summoned via Ministry of Petroleum, hence from his record he produced the relevant documents.

4. We have heard learned counsel for the parties and perused the material available on record.

5. Although this controversy should have settled then and there in terms of facts incorporated in para-3 above, as in the later part of the evidence Mr. Ijaz has pointed out that during production no objection was raised nor at the time of cross-examination recorded before the learned Judge, however, it is incorrect. The orders dated

08.02.2018 and 13.08.2018 speaks volume. It is incorrect that objections were not taken; it was taken at all relevant times. Nonetheless, in the impugned order the learned single Judge has already maintained that the controversy with regard to the documents, as allegedly disputed by the appellant, will not be decided in piecemeal rather would be taken to its logical end at the time of final arguments when the matter would be ripe in this regard and rightly so.

6. At this stage, learned counsel for the appellant has pleaded that this specific issue be framed as to whether the photocopies of the documents are admissible or not. We do not feel it necessary since the crucial issues settled by Court, which goes to the merit of the case, would be dependent on these documents and their production and proof would then be considered by the learned single Judge, as provided under the Qanun-e-Shahadat Order, 1984.

7. With this understanding of law, we do not see any reason to interfere in the impugned order, as the reservations of the appellant was already noticed by the learned single Judge in the impugned order. Disposal of the appeal in the above terms should not be construed as if the documents disputed have been taken on record for consideration. It has to pass the test of satisfaction of learned single Judge, as required under the law, before they were considered.

8. The appeal stands disposed off in the above terms along with pending application(s).

JUDGE

JUDGE