

# HIGH COURT OF SINDH, AT KARACHI

SUIT NO. 1198 OF2006

## ORDER

DATE OF HEARING: 09.10.2013

PLAINTIFF : Pir Sher Muhammad  
Through Mr. Shabbir Ahmed Awan, Advocate

DEFENDANT : Sui Southern Gas Co., Ltd., and another  
Through Mr. Asim Iqbal, Advocate

CMA NO.12499 OF 2012:

**NAZAR AKBAR, J.** This order will dispose of an Application under Section 74 of the Qanun-e-Shahadat Order, 1984 read with Section 151 CPC (CMA No. 12499/2012) filed by the Plaintiff.

The background of this application is that to the dislike of the defendants the evidence of the parties was ordered to be recorded through commissioner by order dated 6.9.2011. On 13.12.2011, the Plaintiff appeared before the Commissioner for recording of evidence and the plaintiff in his examination-in-chief has filed certified copies of the certain documents. The counsel for the Defendants raised objection on the production of certified copies and on the first opportunity he refused to cross-examine the Plaintiff before the Commissioner.

The same objections were placed by the counsel for the Defendants before this Court through CMA No. 12181/2011 with the following prayers:-

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“In view of the above this Honorable Court may be pleased to discard the documents exhibited by the learned Commissioner and declare the examination-in-chief recorded by the learned Commissioner as null and void”.

However, application of the Defendants was not allowed as the evidence of the Plaintiff has not been discarded nor the documents so placed have been discarded by this Court. The aforesaid CMA No. 12181/2011 was disposed of by Order dated 24.09.2012. The operative part of the Order is reproduced herein below:-

“This application is disposed of with the direction that the counsel for the plaintiff may file appropriate application in this case, which will be decided on its own merits. Further, it is clarified that unless the Court passes the orders on the appropriate application moved by the plaintiff, the photocopies / certified true copies of the annexures attached with the plaint and exhibited by the Commissioner will not be treated part of evidence”.

In line with the orders reproduced above, the plaintiff has filed the present application for a formal permission to place certified copies on the record. The defendants have filed counter-affidavit to this application. The controversy in the suit is originating from the termination order issued by the defendants. The plaintiff has challenged his termination before the Service Tribunal through Appeal No.21 of 2003 which was abated in 2006. Therefore, he filed the present suit and he has relied on the correspondence and official letters/orders issued by the defendant during the course of employment and, as such, each document mentioned in the application and already filed with the plaint and in his examination-in-chief has its roots in the office of the defendants. Most of these documents are admitted as the defendants in their written-statement have not denied or disputed these documents and their contents. In their counter-affidavit, the defendants have not denied issuance of show cause, charge sheet and termination letter by them. Nor replies by the plaintiff has been denied. Nothing has been alleged to have been changed/forged in certified copies. The defendants have not denied that the plaintiff has sent a request for providing certified copies of these documents from their official record.

The controversy raised by the defendants before the learned Commissioner for recording of evidence has hampered the progress of the suit. Such practice of creating technical hurdles in disposal of lis on merit cannot be encouraged by the Court. This application is allowed and it goes without saying that even otherwise Courts are not supposed to pass any verdict on the quality of evidence under Section 151 CPC during recording of evidence as the evidentiary value of the documents is to be determined at the time of final disposal of the suit when issuewise judgment is to be delivered on the basis of evidence. The documents sought to be produced through this application are already on the file of Plaintiff's evidence. These documents be treated as part of evidence. The Plaintiff's examination-in-chief has been completed and the documents have not been discarded nor examination-in-chief has been discarded by the Court. The record shows that once the counsel for the Defendants refused to cross-examine the Plaintiff, the Plaintiff has closed his side since he has no other witness to produce in support of his claim in the suit. Plaintiff has closed his side for evidence after the examination-in-chief since the Defendants' counsel has refused to cross-examine the witness and he wanted to get examination-in-chief be discarded but he failed, since his application CMA No. 12181/2011 has not been allowed. He has not preferred any appeal on failing to get the evidence discarded. In the circumstances, since the Courts should not allow either party to capitalize on the weaknesses of the other side or knock out any of the parties on the technical ground, the plaintiff shall be treated as still in the witness box and the defendants are allowed to cross-examine the Plaintiff before the same Commissioner within one month from the date of this order.

The plaintiff's grievance of alleged dismissal dated 26.9.2002 is already eleven years old including this suit which is seven (07) years old, therefore, it is expected that the Defendants would cooperate with the Commissioner for recording of evidence and conclude his cross-examination within one month from today. The Defendants shall also

produce their witnesses before the same Commissioner after cross-examination of the Plaintiff and that exercise be finished within two months after cross-examination of plaintiff so that this case may be disposed of on merits which should not prejudice either party.

Application is disposed of in above terms

JUDGE

Karachi:  
Dated:

Amj/PA