*HCJD/C-121*

**JUDGMENT SHEET**

**IN THE SLAMABAD HIGH COURT, ISLAMABAD**

**Civil Revision No. 97 of 2020**

**Zafar Mehmood and another**

***Versus***

**Mst. Shaheen Baig and another**

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| **Petitioners by** | **:** | Raja Aamir Azad, Advocate. |
| **Respondent No.2 by :** | | Mr. Muhammad Nazir Jawad, Advocate. |
| **Date of Hearing :** | | 24.11.2021. |

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***Babar Sattar, J:-*** The petitioner has impugned order dated 05.10.2019 passed by the learned Civil Judge disposing off an application under Order VIII Rule 2 of Civil Procedure Code, 1908 **("CPC")**, whereby the learned Civil Court has denied permission to submit documents of a private nature that the petitioner did not list at the time of submission of his written statement.

2. Learned counsel for the petitioner submitted that the learned Civil Court had subjected the application of the petitioner under Order VIII Rule 2 to discriminatory treatment by categorizing the documents that the petitioner sought to file in three categories: i.e. documents that form the moot point of the controversy before the Court; documents that form part of the judicial record; and documents that were classified as private documents. That the learned Civil Court allowed the documents in the first two categories to be submitted but rejected the

request for submission of documents that were classified as private documents in view of Order XIII Rule 2 of CPC by stating that a list of such documents ought to have been filed along with the written statement. Learned counsel for the petitioner relied on ***Rab Nawaz Vs. Mohammad Nawaz and 2 others*** ***(1994 CLC 64),*** ***Tehsil Municipal Administration Vs. Additional District Judge and others*** ***(2005 CLC 1698)*** *and* ***Anwar Ahmad Vs. Mst. Nafis Bano through Legal Heirs*** ***(2005 SCMR 152)*** for the proposition that non-filing of documents along with the written statement was not fatal and the learned Civil Court had discretion to accept such documents and such discretion in relation to a request for submission of such documents ought to be exercised liberally.

3. Despite efforts to serve notices on respondent No.1, including through proclamation, nobody appeared on her behalf therefore she was proceeded against ex-parte.

4. Learned counsel for respondent No.2 submitted that CDA was a proforma respondent in the instant petition and left it to the Court to decide the matter in accordance with law.

5. Let us first consider the judgments relied on by the learned counsel for the petitioner. In ***Anwar Ahmad Vs. Mst. Nafis Bano through Legal Heirs*** ***(2005 SCMR 152)*** the august Supreme Court had held that where a document which had not been relied upon in the plaint nor filed in the Court before the first hearing was produced at the time of recording of evidence without any objection from the other party, any objection to production of such document stood waived and such

document was to be taken into consideration for purposes of adjudication of the dispute. The ratio of the decision in relation to Order VIII Rule 2 was that the contesting party had brought the document in question on record without any objection and consequently it was on ground of waiver that the august Supreme Court ruled that reliance on the document could not be contested at the appellate stage. In the instant case the request for production of documents not listed in any list of reliance at the time of filing of written statement has been contested by respondent No.1 and consequently the ratio in ***Anwar Ahmad*** is distinguishable.

6. In ***Rab Nawaz Vs. Mohammad Nawaz (1994 CLC 64)*** the learned Lahore High Court had overturned the decision of the learned Civil Court in denying permission to place a document on record by holding that whether or not such document was genuine would be a matter of evidence and as the law supported adjudication of dispute on merits, the learned Civil Court ought to have granted permission to place the said document on record. In ***Tehsil Municipal Administration Vs. Additional District Judge and others (2005 CLC 1698)*** the learned Lahore High Court also held that where a document was essential for the just decision of the case its production could be allowed and the defaulting party could be burdened with reasonable costs to compensate the other party for negligence for not filing the documents at the relevant time. With all due respect to the learned Lahore High Court, this Court is not convinced that the reasoning in the aforementioned judgments is

in consonance with the legislative intent as reflects in the provisions of CPC.

7. The question of rejection of the request to file documents not listed in the list submitted along with the written statement came before the august Supreme Court in ***Muhammad Umar Mirza Vs. Waris Iqbal (1990 SCMR 964)***. The trial Court had rejected the request for submission of documents by holding that introduction of such documents would prejudice the interests of the contesting party and the august Supreme Court upheld the decision by holding that no documentary evidence could be produced at a later stage if not filed at the first hearing of the suit, unless good cause was shown to the satisfaction of the learned trial Court for non-production of such documents.

8. In ***Fazal Muhammad Vs. Mr. Chohara (1992 SCMR 2182)*** the High Court had kept out of consideration a will that had not been properly produced before the Civil Court and had not been mentioned in the judgment of the Civil Court. The august Supreme Court upheld the decision of the High Court to keep out of consideration the said will and held that such evidence which was not properly produced at the relevant time could not be entertained for adjudication of a claim at a subsequent stage.

9. In ***Shaukat Ali Butt Vs. Islam ul Haq (2003 YLR 1814)*** it was held by the learned Lahore High Court that where no good cause was shown for non-production of documents at the first hearing of the suit as required under Order XIII Rule 1,

the Civil Court has rightly denied the application for production of additional evidence. It was held by the learned Lahore High Court that the purpose of Order XIII is to ensure that the party is not enabled by the Civil Court to augment its evidence at a subsequent stage of the trial. And that once trial commences, permission to allow filing of documents not relied on or produced at the first hearing was to remain an exception and not become the rule. The learned Balochistan High Court expressed a similar view in ***Haji Baz Muhammad Vs. Mst. Humaira Mst. Humera alias Shireen Taj (PLD 2003 Quetta 128)***, wherein it was observed that ignorance of law was no excuse, that provisions of Order XIII Rule 1 were of a mandatory nature and the object of the same was to obviate the possibility of producing forged or suspicious documents by a party at a later stage of the proceedings, and further that both parties are aware at an early stage as to what the case against them is and what documents are being relied upon by the contesting party. And that in view of Order XIII Rule 1 and 2 the documentary evidence to be relied upon is to be resolved at the earliest stage so that no party is taken by surprise at a belated stage.

10. The august Supreme Court in ***Sher Baz Khan and others Vs. Malikani Sahibzadi Tiwana and others (PLD 2003 SC 849)*** held that "*an unsuccessful party in a suit is not to be granted opportunity to fill up weaker parts of its case by producing additional evidence to the prejudice of the other party"*. In that case no explanation had been provided as to why the documents sought to be relied upon were not produced at the first hearing.

11. This Court is guided by the aforementioned precedents of the apex court. The CPC prescribes a certain methodology for a trial to be conducted where a dispute that emerges between the parties is of a civil nature. The CPC prescribes certain requirement that need to be fulfilled at each stage of the trial and Orders as prescribed suggest that there is a continuing focus within the mechanics of trial as prescribed by CPC that the documents in possession of each party in support of its claim are produced at the earliest possible stage. Order V of CPC deals with service of summon and Rule 7 of Order V states the following:

> ***7. Summons to order defendant to produce documents relied on by him.*** *The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.*

Order VII regulates for filing of a plaint and Order VII Rules 14 and 15 state the following:

> ***14. Production of document on which plaintiff sues.*** *(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.*
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> ***List of other documents****. (2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.*
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> ***15. Statement in case of documents not in plaintiff's possession or power.*** *Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.*

Order VIII regulates the filing of the written statement and Rules 2 and 9 of Order VIII state the following:

> ***2. New facts must be specially pleaded.*** *The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.*
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> ***9. Subsequent pleadings.*** *No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.*

Rules 1 and 2 of Order XIII relevant for our present purposes state the following:

> ***1. Documentary evidence to be produced at first hearing.*** *(1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.*
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> *(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.*
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> *(3) On production of documents under this rule, the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or, as the case may be denial.*
>
> ***2. Effect of non-production of documents.*** *No documentary evidence in the possession or power of any*

> *party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.*

12. In view of the above Orders and Rules it is patent that right from the time of issuance of summons there is an emphasis of the CPC on production of documents which form the basis of a plaint being made by one party against the other at the earliest and such requirement is built into the Orders regulating the filing of the plaint as well as filing of the written statement. The scheme of CPC is that at the stage of the trial when the pleadings are to be completed each party is under an obligation to file all documents on which it relies and bases its claim and also provide a list of documents that it wishes to rely on in order to support its claim even if such documents are not in its possession. The purpose of the aforesaid scheme is that the CPC does not permit trial by ambush. The concept of fair trial of civil action requires that each party must reveal its claim or defence as well as the relevant documentary evidence on which it basis its case to the other party prior to commencement of the trial. The scheme of the CPC does not permit springing a surprise on the other party in the midst of a trial but requires each party to play by rules in which all the cards are placed on the table face up. It is through the discovery of relevant material on the basis of which a claim is made that the party becomes aware of the strength of such claim and in view of the strength of the claim each party then has an opportunity to engage in amicable resolution of the dispute or settlement negotiations without

investing time and resources in its adversarial resolution through trial.

13. It is for such purpose that Order XIII mandates that the documents to be relied upon must be produced at the first hearing. This requirement is not a technicality. It is to ensure timely disclosure and discovery of documents to enable each party to prepare its case, come up with a trial strategy if pre-trial settlement fails, and determine the witnesses that ought to be produced in support of the claim. The purpose also is to encourage a resolution of the dispute and prevent unnecessary litigation in the event that settlement can be reached in view of all the facts, circumstances, and documentary evidence in possession of the parties. What Order XIII is also designed to prevent is a piecemeal trial of civil disputes. Once the pleadings of the parties are complete and all documentary evidence has been produced before the court, the court then allows the parties to adduce evidence followed by final arguments. Once a party had led its evidence and consequently produced before the Court all the documentary evidence as well as the oral testimony in support of its claim the other party cannot then be allowed to introduce fresh documents to fill any gaps in its defence or mount a fresh claim or defence in lieu of the entire body of evidence already adduced by the contesting party. Once the trial has entered into the stage of evidence it cannot be dragged back to the stage of discovery and completion of pleadings by allowing production of documents and then affording the other party an opportunity to counter such document. If such a scheme were allowed, it would result in trials dragging on without any end in

sight. Thus, the requirements of Order XIII are meant to ensure that trial in a civil action is not trial by ambush. The afore-cited provisions of various Orders of CPC are meant to ensure that the requirements to be complied with at each stage of a trial are complied with within the time prescribed. This is to ensure that the parties as prudent persons are encouraged to enter into settlement of claims without trial in view of the strength of their respective cases. And the scheme of CPC is finally meant to ensure that in the event that trial commences, the right of no party is prejudiced by introduction of material and documents that were required to be revealed at the first hearing of the suit but either due to negligence or deliberately to surprise the other party at a later stage in the trial.

14. For the aforesaid reasons the suggestion that Order XIII is a directory rule of practice that can be dispensed with by a Court in its discretion cannot be countenanced. Such approach would play havoc with the scheme of CPC and not only prejudice the rights of parties to abide by requirements of procedural law but also preempt possibility of settlement of disputes without trial due to lack of discovery of crucial documents, apart from prolonging the length of trial and causing serious harm to public interest due to consumption of limited court time and resources thereby delaying the adjudication of disputes.

15. In view of the above, the contention of the learned counsel for the petitioner that provisions of Order XIII ought to have been applied by the learned Civil Court in a liberal fashion is without merit. The petitioner has failed to point out any

illegality in the refusal of the learned Civil Court in accepting additional documents at a stage when the evidence of the parties have already been recorded. The petition is without merit and is **dismissed** with cost in the amount of Rs.10,000/- payable by the petitioner to respondent No.2 within a period of thirty days. Learned counsel for the petitioner will file a certificate stating the order as to costs has been complied with by or before the expiry of the 30 day period.

**(BABAR SATTAR)**
**JUDGE**

Announced in open Court on 28.01.2022.

**JUDGE**

**Approved for reporting**.

*M.A. Raza*