ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ PetitionNo.3944 of 2021

M/s Wah Noble Chemicals Ltd.

Versus.

M/s Wood Board industries, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.05.2022	Syeda Nida Zehra, Advocate for petitioner. Mian Imran Masood, Advocate for respondent.

The instant writ petition is arising out of order dated 29.09.2021 passed by the Civil Judge 1st Class, Islamabad West, whereby application filed by the petitioner for additional evidence was dismissed.

2. Relevant facts are that on 28.10.2015 petitioner filed suit for recovery of Rs. 6,607,462 alongwith interest and damages of Rs. 3,150,000/- against the respondents 1 & 2. Initially, on account of failure of the latter, suit was decreed ex-parte vide judgment and decree dated 23.06.2016. Subsequently, respondent No.1 joined the proceedings and then respondent No.2. The ex-parte judgment and decree was set aside by a consent order. Finally, issues were settled on 24.05.2019 and the suit was at the stage of plaintiff's evidence when the referred application was filed which was contested by the respondents 1 & 2 and was dismissed vide impugned order, hence instant writ petition.

3. Learned counsel for the petitioner submits that the observations made basis to turn down the application are not only contrary to ground situation but also against the law on the subject. According to the learned counsel, the very purpose of the documents, sought to be tendered, and

to supersede the Special Attorney have elaborately been submitted during the course of arguments but despite that the application was turned down without adverting to the necessity of the documents and the importance of change of Special Attorney as it would amount to left the petitioner unrepresented. Learned counsel relies upon case law reported as **2005 SCMR 152 and 2013 CLC 1789.**

4. On the other hand, learned counsel for respondents 1 & 2 repelled the above submissions by contending that the application is aimed to prolong the proceedings as the petitioner despite availing numerous opportunities have not yet completed their evidence and that the documents did not form part of list of reliance, therefore, petition is liable to be dismissed. Learned counsel relied upon case law reported as **(2021 CLC 798)**.

5. Heard, record examined.

6. At the inception, it is noticed that the petitioner requested to lend authority to another person for their representation before the Court as special Attorney as the earlier designated attorney had left the country permanently. The authority to appoint a Special Attorney for and contest a suit is the prerogative of a litigant and in absence of any lawful justification it cannot be taken away as it would amount to negate a right to a litigant envisaged in Article 10-A of the Constitution. The reason put-forth by the petitioner qua inability of the Special Attorney on account of his being abroad was not refuted by the other side. It is also to be noted that the Special Attorney appointed for a specific purpose has to defend the rights of “Principal” on all counts and not exclusively for making a statement, whose authenticity or otherwise would be subject to cross-examination by the other side at the time of final decision of the case.

7. Adverting to the documents sought to be produced, record reveals that claim of the petitioner basis upon stated business transaction with respondents 1 & 2 during the period 10.07.1993 to 27.06.2013, and 23.11.2013 as reveals through Paras-6 & 7 of the plaint while the receipts and cheque pertain to the year 2002, 2008, 2009, 2011, 2012 and 2013 respectively. Apparently, these receipts and Cheque pertain to the intervening period of the stated transactions; therefore, there was no justification to turn down the request of the petitioner particularly when no prejudice is to be caused to the other side who, of course, will have a right to rebut the same. The admissibility or otherwise of the documents would also be determined at the time of final conclusion of the case.

8. It appears that the learned Trial Court decided the application in the light of stated conduct of the petitioner and not on its own merits, which aspect if seen in the light of proceedings so far conducted, does not seem to be in accordance with the ground situation for the reason that the petitioner filed the suit in October, 2015. It remained pending without contest by respondents 1 & 2 for about a year when it was decreed ex-parte and after about three years ex-parte decree was set aside in May, 2018. The suit thus had taken about three years to reach the stage of contest. Initially the respondent No.1 joined the proceedings, filed written statement and then the course was followed by respondent No.2 and ultimately trial was set in motion when issues were framed on 24.05.2019. Although, the petitioner has not yet concluded evidence as was observed by the Trial Court in Para-7 of the order but the aspect of extra ordinary circumstances due to pandemic of COVID-19 cannot be over sighted. However, it does not mean that the conduct of the petitioner is aboveboard. After contest by the respondents 1 & 2 and framing of issues in May 2019 no significant progress has yet been made despite lapse of more than three

years. The suit pertains to the year 2015 is still without material progress in the year 2022.

9. It is deemed necessary to mention that the legislative intent behind promulgating the Cost of Litigation Act, 2017 is to deter frivolous litigation and to impose the cost of litigation in a just and reasonable manner on the party whose conduct inflicts such cost on another. In the case like the one at-hand, where any of the parties found guilty of frivolous litigation, can be subjected to imposition of the cost of litigation in terms of Section 35 or 35-A CPC, as the case may be.

10. In view of above, impugned order dated 29.09.2021 is set-aside. The application of the petitioner for submission of documents and change of Attorney is allowed. The suit pertains to the year 2015, therefore, learned Trial Court shall make every endeavor to decide the same within a period of three months from the receipt of this Order.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran***//**