

P L D 1994 Supreme Court 501

*Present: Ajmal Mian, Sajjad Ali Shah
and Saleem Akhtar, JJ*

JAMEEL AHMED ---Petitioner

versus

SAIFUDDIN---Respondent

Civil Petition No. 507-K of 1993, decided 24th February, 1994

(On appeal from the order of the High Court of Sindh, Karachi dated 28-11-1993 passed in RA. No.214 of 1993).

(a) Civil Procedure Code (V of 1908)

---0. XLI, R.23---Remand---Court, trying the suit on remand, has to regulate the proceedings and proceed with the case in terms of the order of remand passed by the higher Court.

(b) Civil Procedure Code (V of 1908)---

---0. IX, R. 6---Decree in ex parte matter is either passed under O. IX, R.6, C.P.C. on the basis of averments made in the plaint on oath or on the affidavit of proof filed by the plaintiff or by recording the oral statement of the plaintiff---Such procedures are available in cases the defendant is absent and has been declared px parte.

(c) Qanun-e-Shahadat (10 of 1984)--

---Art. 2(1) (c)---Civil Procedure Code (V of 1908), O.XVIII, R.2--Evidence---Definition---"Evidence of the plaintiff and the "statement of the plaintiff ---Distinction---Remand order stated that "the case is sent back to the Trial Court for proceeding with the case from the stage. of evidence of the plaintiff" after the respondent had been made ex parts---Said order concluded "decision on merits would depend upon the evidence of the plaintiff and the facts brought out in examination-in-chief and cross-examination of the plaintiff ---Held, as the order at each material stage started and referred to the recording of evidence of the plaintiff, that would mean that the evidence of all the witnesses and the statement of the plaintiff himself was to be recorded.-"Evidence" being a comprehensive word which included statement of witnesses, parties and documents which were produced in a Court or judicial forum to ,prove or disprove the case---Order could not be said to have restricted the recording of evidence of the plaintiff alone.--[Word and phrases].

In the present case the remand order which stated that "the case is sent back to the trial Court for proceedings with the case from the stage of evidence of plaintiff as it was on 24-4-1976 after the respondent had been made ex parte."

There is nothing in the order that only statement of the plaintiff was to be recorded. The emphasis is on evidence of the plaintiff, not on statement of the plaintiff. This conclusion is further supported by the concluding part of the order where it was observed that "decision on merits would depend upon the evidence of the plaintiff and the facts brought out in the examination-in-chief and cross-examination of the plaintiff". Again the emphasis is on the evidence of the plaintiff and secondly the facts which may emerge from the examination-in-chief and cross-examination, that is the statement of the plaintiff. If the intention would have been to allow the plaintiff to get his statement recorded alone, then in specific terms such order would have been made.

One has to distinguish between the words `evidence of the plaintiff' and the `statement of the plaintiff. Evidence of the plaintiff .includes the statement of witnesses, the plaintiff himself and also the documentary evidence that may be produced whereas statement of the plaintiff is restricted only to his examination-in-chief and cross-examination and documents produced by him.

The word "evidence" has been defined in Article 2(1)(c) of the Qanun-eShahadat,1984.

Definition of "evidence" as given in Article 2(1)(c) of the, Qanun-eShahadat, 1984 clearly contemplates that evidence means and includes such statements of witnesses which are produced in a Court in relation to the case tried by such Court and also documents which are produced in the Court. From this definition it is also clear that the word "evidence" cannot be restricted merely to the statement of a party or to any one specific witness. It will include the statements of all the witnesses recorded by the Court and the documents produced during trial. As the order at each material stage states and refers to the

;recording of evidence of the plaintiff, it would mean that the evidence of all this witnesses and the statement of the plaintiff, himself was to be recorded.

"Evidence" is a comprehensive word which includes statement of witnesses, parties and documents which are produced in a Court or judicial forum to prove or disprove the case. Considering in this context the remand order could not be said to have restricted the recording of evidence of the petitioner/plaintiff alone.

If a restricted view is taken, then for no fault of his own the petitioner is debarred from leading his evidence to prove the case. The plaintiff in law was entitled on 24-4-1976 to produce his entire evidence including witnesses and documents and there was no bar on restrict his right only to giving his own statement. Such right which was available on 24-4-1976 was to continue in terms of order of remand which had directed the trial Court to proceed from the stage of hearing held on 24-4-1976.

Law of Evidence by Monir ref.

Ahmedullah Farooqi, Advocate-on-Record for Petitioner

KA. Wahab, Advocate-on-Record for Respondent

Date of hearing: 24th February 1994