

**P L D 2007 Karachi 448**

**Before Khilji Arif Hussain, J**

**ARIF HASHWANI and 3 others---Plaintiffs**

**V e r s u s**

**SADRUDDIN HASHWANI and 3 others---Defendants**

Suit No.1001 of 2004 and C.M.As. Nos.600, 601, 1177, 1360 and 1361 of 2007, decided on 27th April, 2007.

**(a) Civil Procedure Code (V of 1908)---**

---O. VII, Rr. 1, 14, O.VI, R.2 & O.XIII, R.2---Non-production of evidence (recorded cassettes) along with plaint---Effect---Party who failed to produce documents on the first date of hearing, or within the time granted by the Court then unless good cause had been shown for non-production of the documents on the first date of hearing such documents could not be allowed to be produced by him---Nonetheless, in the present case plaintiffs had relied upon cassettes in question and specifically mentioned the same in the memo. of plaint as required under O.VII, R.14(2), C.P.C. and further produced the same before the expiry of time for production of documents fixed by the Court, there was no delay in production of the documents by the plaintiffs in existing circumstances-Principles.

Order VII, Rule 1, C.P.C. provides that the plaint should contain apart from the name of the Court, name, description of the plaintiffs, name and description of the defendants, then facts constituting the cause of action, facts showing that the Court has jurisdiction and relief claimed by the plaintiffs. Order VI, Rule 2, C.P.C. required that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

On reading Order VII, Rule 1 read with Order VII, Rule 14 and Order VI, Rule 2, C.P.C. it appears that plaintiffs while giving description of the parties also has to state concise material facts on which party pleading relies upon the purpose for his claim or defence which he wants the other parties to know what they are required to meet but not the evidence by which they are to prove. The plaintiffs claim, in the present suit, is based upon family settlement between the parties and shareholding of defendant-Company and the recorded cassettes are not the basis of the claim in the matter but can be a piece of evidence in support of the plaintiffs' claim in the matter and the plaintiffs are not required in terms of Order VI, Rule 2, C.P.C. read with Order VII, Rule 1, C.P.C. to disclose or produce the same along with the plaint. As regards Order VII, Rule 14, C.P.C. the plaintiffs are required to produce only those documents upon which plaintiffs sue against the defendant and the other documents in support of claim and are not the basis of the cause need not to be produced along with the plaint but the plaintiffs if want to rely upon any such documents, evidence, whether in his possession or not has to disclose the same as documents relied upon in a list to be annexed with the plaint.

As regards the question that the defendant has failed to produce the cassettes within a reasonable period of time it appears that the plaintiffs did not file tape/audio recorded cassettes, CD and transcript along with other documents filed with the plaint but made reference to the same as documents relied upon. It appears that in their application-plaintiffs produced copies of the tapes/audios CD along with their statement and same were produced by the expert witnesses after 22 months of institution of the suit. The claim of the plaintiffs is not based upon audio/video tapes but they want to rely upon the same as a piece of evidence in support of their claim. Parties after the framing of issues were directed to file documents within a week in support of their respective claims and much before the passing of the order directing the parties to file documents in support of their respective claims. Plaintiffs have not only produced transcript of the audio tapes in question but also produced the same in Court. The plaintiffs filed an application under section 151, C.P.C. seeking permission to bring on record audio/video

cassettes and it was ordered to be fixed along with the main case after recording of the evidence. It is not disputed by the defendants that the entire transcript of the audio recording were brought on record by the plaintiffs within a reasonable period of time and further cassettes and CD tapes were produced along with application under Order XIII, Rule 2, C.P.C.

The party who failed to produce documents on the first date of hearing or if within the time granted by the Court then unless good cause has been shown for non-production of the documents on the first date of hearing such documents cannot be allowed to be produced by the party, who failed to produce the same on the first date of hearing. Nonetheless in the matter the plaintiffs relied upon cassettes in question and specifically mentioned the same in the memo of plaint as required under Order VII, Rule 14(2), C.P.C. and further produced the same before the expiry of time for production of documents fixed by the Court. For the foregoing reasons, there was no delay in production of the documents by the plaintiffs.

**(b) Qanun-e-Shahadat (10 of 1984)----**

---Arts. 164, 46-A, 70(8)(a), 73 & 2(1)(b), (c), (e) & (f)---Electronic Transmission Ordinance (LI of 2002), Preamble---Audio, video recorded cassettes, CDs are admissible piece of evidence; however, the authenticity of same is always subject to proof in case the party against which it can be used disputed or denied the authenticity and information contained in the said electronic documents---Principles elaborated.

**(c) Interpretation of statutes---**

---Word "include" is always used in 'interpretation clause' in order to enlarge the meaning of the word and phrase occurring in the body of a statute.

**(d) Qanun-e-Shahadat (10 of 1984)---**

----Art. 73---Copy of an electronic generated information can be used as a preliminary evidence as provided, in Art.73 of Qanun-e-Shahadat, 1984; nonetheless original copy at least of mobile-phone memory card admittedly empty, and one can say that the preliminary evidence has been destroyed and party is not in a position to produce the same as such secondary evidence can be accepted in the matter.

Hakim Ali Bhatti v. Qazi Abdul Hakim and others 1986 CLC 1784; Mst. Mariam Haji and others v. Mst. Yasmin R. Minhas and others PLD 2003 Kar. 148; Rup Chand v. Mahabir Prashad AIR 1956 Punjab 173; Yousuf Ali Ismail Ali Nagri v. State AIR 1968 SC 147; Lachmandas v. Deepchand AIR 1974 Raj. 79; Sumitra Debi v. Calcutta Dyeing & Bleaching Works AIR 1976 Cal. 99; Smt. Joginder Kaur v. Surjit Singh AIR 1985 Punjab and Haryana 128; C.R. Mehta v. State of Maharashtra 1993 Cr.LJ 2863 and Partab Singh v. State of Punjab AIR 1963 Punjab 298 ref.

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

----Arts. 164, 46-A, 70(8)(9), 73 & 2---Tape record cassettes are admissible piece of evidence, but while accepting the same, extra care is to be taken to declare and satisfy that the voice of the person alleged, and there is no tampering with the recorded statement---Best person who can make a statement about the authenticity of the conversation in tape is the defendant himself and the basis of his statement that there was any tampering, whether voice in the recorded cassette is his voice or not, whether there was any editing in the conversation or not can be decided.

Hakim Ali Bhatti v. Qazi Abdul Hakim and others 1986 CLC 1784; Mst. Mariam Haji and others v. Mst. Yasmin R. Minhas and others PLD 2003 Kar. 148; Rup Chand v. Mahabir Prashad AIR 1956 Punjab 173; Yousuf Ali Ismail Ali Nagri v. State AIR 1968 SC 147; Lachmandas v. Deepchand AIR 1974 Raj. 79; Sumitra Debi v. Calcutta Dyeing & Bleaching Works AIR 1976' Cal. 99; Smt. Joginder Kaur v. Surjit Singh AIR 1985 Punjab and Haryana 128; C.R. Mehta v. State of Maharashtra 1993 Cr.LJ 2863; Partab Singh v. State of Punjab AIR 1963 Punjab 298; Ziyauddin Burshanuddin Bukhari v. Brij Mohan Ramdas Mehra and others AIR 1975 SC 1788 and Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1976 SC 57 ref.

**(f) Qanun-e-Shahadat (10 of 1984)---**

----Arts. 30, 59 & 73---Statement generated by the automated information system is admissible to prove an admission made by the parties---Admission information has, been defined under Art.30, Qanun-e-Shahadat 1984 as a statement oral or documentary which suggested any inference as to, fact in issue or relevant facts which is made by any person and in view of Explanation added to Art.30, statement generated by automated information system can also be used as an admission by any person---Opinion of a forensic witness, in terms of Art.59 of Qanun-e-Shahadat, 1984 relating to authenticity or integrity of electronic document made by or through any information system is also admissible---Printout or other form of reproduction of another electronic document is admissible in evidence as preliminary evidence in view of Explanations 3 and 4 to Art. 73, Qanun-e-Shahadat, 1984---Reproduction of an electronic document cannot be termed as coy or secondary evidence.

Miss Sana Minhas and Adnan Chaudhry for Plaintiffs.

Iqbal Qazi, Liaquat Merchant and Zahid F. Ebrahim for Defendants.

Dates of hearing: 27th February; 7th, 20th and 22nd March, 2007.