**SUPREME COURT OF AZAD JAMMU AND KASHMIR**
[Appellate Jurisdiction]

**PRESENT**:
**Mohammad Azam Khan, C. J.**
**Raja Saeed Akram Khan, J.**

Civil Appeal No.10 of 2016
(PLA filed on 22.10.2015)

Muhammad Ramzan Chughtai, Bureau Chief, Daily Khabrain, Mirpur, Azad Kashmir.

….APPELLANT

**VERSUS**

1. Arshad Mahmood Ghazi son of Ghazi Ellahi Bux, caste Kashmiri, r/o House No.7, Sector B-3, Mirpur City.

….. RESPONDENT

2. The Daily News Khabrain, Rawalpindi, Islamabad through its Chief Editor, Zia Shahid.
3. Zia Shahid, Chief Editor Daily News Khabrain, Rawalpindi, Islamabad.
4. Imtinan Shahid, Editor, Daily News Khabrain, Rawalpindi/Islamabad.
5. Representative Daily Khabrain, Mirpur.
6. Raja Yasir son of unknown r/o Mirpur city.

…..PROFORMA-RESPONDENTS

(On appeal from the judgment of the High Court dated 13.10.2015 in Revision Petition No.73 of 2015)

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| FOR THE APPELLANT: | Mr. Qadeer Hussain, Advocate. |
| FOR THE RESPONDENT: | Raja Inamullah Khan, Advocate. |
| *Date of hearing*: | 22.12.2016. |

***Judgment:***

***Raja Saeed Akram Khan, J.—*** The supra titled appeal by leave of the Court has been addressed against the judgment of the High Court dated 13th October, 2015, whereby the revision petition filed by the appellant, herein, has been dismissed.

2. Succinctly, the facts as emerged from this appeal are that the plaintiff-respondent, herein, filed a suit for recovery of Rs.50,000,000/- (fifty million rupees) in the Court of learned District Judge, Mirpur. During the pendency of the suit, an application was moved by the defendant-appellant, herein, for production of some documents as an

additional evidence. It was averred in the application that the documents mentioned therein are relevant and the applicant wants to tender the same in support of his evidence. It was also averred that the matter is at the stage of defendant's evidence, therefore, the application under law may be accepted and applicant may be allowed to produce the same as documentary evidence. Objections were filed by the plaintiff-respondents, herein, on the said application, whereby, it was submitted that the application has been filed just to linger on the matter. The learned District Judge, Mirpur, in the light of the pleadings of the parties, dismissed the application filed by the defendant-appellant, herein vide order dated 13.08.2015. The order of the trial Court was assailed before the High Court by way of a revision petition which was also dismissed vide impugned judgment dated 13.10.2015, hence, this appeal by leave of the Court.

3. Mr. Qadeer Hussain, Advocate, the learned counsel for the appellant, argued that the judgment passed by the High Court is against law and facts of the case which is not sustainable in the eye of law. He added that the impugned judgment has illegally been passed while deviating from the relevant provisions of law and without application of judicial mind which is liable to be dismissed. He submitted that both the Courts below erred in law while not taking into consideration that the documents which the defendant wants to tender as evidence are necessary for just and fair decision of the case. He added that the documents wanted to be produced by the defendant as additional evidence before the trial Court were not in his possession at the time of filing of written statement or at first hearing. In continuation of his arguments, he submitted that under Order XIII, rule 2, CPC, the documents necessary to reach the just decision of the case can be produced at any subsequent stage of the proceedings, but this provision of law

has been over looked by the High Court while handing down the impugned judgment.

4. On the other hand, Raja Inamullah Khan, Advocate, the learned counsel for the respondent, strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the order passed by the High Court is perfect and legal which is not open for interference by this Court. He added that it is mandatory for the parties to produce all the documentary evidence in their possession at first hearing of the case. He further submitted that the plaintiff-respondent, herein, filed a suit for recovery of a sum as damages for defamation against the defendant-appellant, herein, in the year 2011, whereas, the appellant wants to bring on record the copies of newspapers published in 2015 which have no nexus with the case in hand. He further added that application for producing documents as additional evidence was filed on 19.06.2015 after almost four years of filing of suit but no reason has been assigned for filing such

belated application after a considerable delay. He has relied upon the cases reported as *Haji Baz Muhammad and another vs. Mst. Humera alias Shireen Taj and 3 others* [PLD 2003 Quetta 128] and *Rashid Mehmood and another vs. Sardar Begum and 6 others* [2013 SCR 200].

5. We have heard the learned counsel for the parties and perused the impugned judgment along with the record made available. The issue involved in the matter is regarding production of documents as additional evidence. Form the record it is spelt out that the suit was filed on 02.01.2012, the written statement was filed on 11.12.2012 and the issues were framed on 17.04.2013, whereas, the application for producing certain documents was moved on 19.06.2015. The contents of the application read as under:-

"درخواست بمراد شامل مثل فرمائے جانے
دستاویزات بذیل از قسم اخبارات وغیرہ

1۔ حتمی نتائج امیدواران الیکشن سال 2011 حلقہ LA/(III) میرپور III

2۔ حتمی نتائج امیدواران ضمنی الیکشن سال 2015 حلقہ LA/III میرپور III

3۔ نقل FIR علت نمبر 156/01 تھانہ پولیس سٹی میر پور

4۔ کشمیر ٹائمز اخبار راولپنڈی مورخہ 31 مارچ 2015

5۔ روزنامہ صدائے چنار راولپنڈی مورخہ 31 مارچ 2015

6۔ روزنامہ جموں و کشمیر مظفر آباد/کوٹلی مورخہ 31 ارچ 2015

7۔ روزنامہ کشمیر ایکسپریس مظفر آباد مورخہ 31 مارچ 2015

8۔ روزنامہ کشمیر پوسٹ مظفر آباد مورخہ 31 مارچ 2015

9۔ روزنامہ مشرق مظفر آباد/راولپنڈی مورخہ 31 مارچ 2015

جناب عالی گزارش حسب ذیل ہے۔

1۔ یہ کہ مقدمہ عنوان بالا عدالت جناب والا میں زیر کار ہے جس میں امروز تاریخ پیشی مقرر ہے۔

2۔ یہ کہ درج بالا دستاویزات کو شامل مثل فرفانے سے معاملہ کو درست طور پر یکسو کیا جا سکے جو کہ تقاضا قانون وانصاف بھی ہے۔

3۔ یہ کہ دستاویزات درج بالا معاملہ زیر نزاع سے متعلقہ ہے اس لیئے شامل مثل ہونا انتہائی ضروری ہے۔ دستاویزات مشمولہ درخواست کے شامل نہ ہونے سے معاملہ زیر نزاع کو یکسو نہیں کیا جا سکتا اور نہ ہی انصاف کے تقاضے پورے ہوتے ہیں۔

4۔ یہ کہ سائل اپنے بیانات میں دستاویزات Tender کروانا چاہتا ہے۔

5۔ یہ کہ معاملہ ابھی مدعہ علیہم کی شہادت کے مرحلہ پر ہے اس لیئے تحت قانون دستاویزات مشمولہ درخواست شامل مثل Tender کرنے میں کوئی امر مانع نہ ہے۔

اندریں حالات استدعا ہے کہ بمنظوری درخواست ہذا
دستاویزات درج بالا کو شامل مثل فرما کر Tender کرنے کی
اجازت فرمائی جائے۔ جناب والا کی عین انصاف
پروری ہو گی۔

عرضے نیاز مند

After going through the contents of the application reproduced supra, it appears that in the said application which was filed almost four years after filing of suit, not a single word has been stated for filing such application after a considerable delay. After going through the relevant provision of law i.e. Order XIII, rule 1, CPC, dealing with the production of documentary evidence, it appears that it is incumbent upon the parties to produce their documentary evidence at the first hearing of the suit. First hearing of the suit is the date when the Court frames issues after filing of written statement by the defendants as has been interpreted in a case titled *Muhammad Hanif v. Province of Punjab* [NLR 1981 Civil 37], wherein it has been observed as under:—

> "..... In view of the provisions of Order IX, rule 1, of the Code of Civil Procedure, the date fixed for framing of issues in a suit is a date of its hearing. The case reported as

> *Sheikh Abdul Haque v. Syed Muhammad Anwar* [PLJ 1979 Lahore 245] is an authority in point. In this connection reference can also be made, with advantage, to the provisions of order XIII, rule 1 of Code of Civil Procedure relating to the first hearing of the suit which, according to Chidambaram Chettiar v. Parvathi Achi [AIR 1926 Madras 347], is the date on which issues are framed."

Similarly in the case reported as *Kh. Muhammad Akbar Butt v. Azad Jammu and Kashmir Government and others* [PLD 1996 Azad J&K 10], it has been observed as under:—

> "..... Hearing is not only when evidence has to be recorded by the Court but also when the Court applies its mind to the relevant claims of the parties. 27.6.64 was the date fixed for filing of the written statements of the defendants. When written statements are filed the Court records the statements of the parties and strikes issues. The record of the statements of the

> parties or the striking of the issues amounts to hearing because the Court at this stage applies its mind to the relevant claims of the parties. Disagreeing with the learned counsel for the appellant we hold that the provisions of Order IX, rule 8, C.P.C. apply to the facts of the present case."

It is admitted position that till framing of the issues, no such application was moved. So far as the contention of the learned counsel for the appellant that Order XIII, rule 2, CPC, has not been adhered to by the Courts below while refusing the application for production of documents as additional evidence, is concerned, it may be stated here that Order XIII, rule 2, CPC, authorise the Court to receive the document so produced which could not be produced in accordance with Order XIII, rule 1, CPC, at any subsequent stage, however, at the same time it has been provided in the said rule that the applicant who intends to produce documents has to show a good cause to the satisfaction of the Court for non-production of

the documents under Order XIII, rule 1, CPC. In a case reported as *Rashid Mehmood & another vs. Sardar Begum & 6 others* [2013 SCR 200] , it has been held by this Court as under:-

> "7. We have also appreciated the relevant statutory provision in the light of the arguments of the learned counsel for the appellants. Rule 2 of order XIII of CPC speaks as following:-
>
> > '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.'
>
> The perusal of the statutory provision clearly reveals that a party for production of documents at subsequent stage is burdened with to satisfy the Court with good cause

for non-production of the documents in accordance with the requirement of rule 1 of order XIII of CPC. Thus, it is clear that the party is required to show good cause only if the provision of rule 1 of order XIII are complied with in letter and spirit. The requirement of rule 1, CPC is that; at first hearing of the suit the parties or their pleader shall produce all the documentary evidence of every description in their possession or power on which they have relied and have already filed in the Court and all the documents which the Court has ordered to be produced. Under sub-rule (2), it is further required that the Court shall receive the documents so produced and under sub-rule (3), it is the duty of the Court that on production of documents under this rule, the Court may call upon the parities to admit or deny the documents produced in the Court and record their admission or as the case may be, denial. The stage of first hearing is also prescribed by the Code. According to rule 1(5) of order XIV, the Court at

> the first hearing of the suit after appreciation of the pleadings of the parties, if necessary, examination of the parties, shall proceed to frame the issues. Thus, the effect of non-production of documents as incorporated in rule 2 of order XIII, C.P.C. will come into operation, if the requirement of rule 1 is fully observed by the parties as well as by the Court and if these requirements are not fulfilled, effect of rule 2 doesn't come into operation. Moreover, the phraseology of rule 2 is very much clear. It doesn't prohibit the production of documents but only obliges the parties to show good cause to the satisfaction of the Court."

From the contents of the application filed by the defendant for production of certain documents as additional evidence, we fail to find out any such good cause for non-production of the documents at first hearing. Moreover no explanation is offered for filing the same at belated stage. In this scenario,

the appellant could not be allowed to get the shelter of Order XIII, rule 2, CPC, on the ground that the documents were not in his possession at the relevant time. Even otherwise, the documents which the defendant-appellant wants to produce as additional evidence apparently have no nexus with the suit filed by the plaintiff. Both the Courts have rightly appreciated/interpreted the relevant provisions of law while dismissing the application filed by the appellant. The law referred to and relied upon by the learned counsel for the appellant has no bearing on the case in hand; therefore we do not intend to consider the same. There are concurrent findings recorded by the Courts below which need no interference by this Court.

In view of the above, this appeal having no force is hereby dismissed.

Muzaffarabad.
___.01.2017. **JUDGE** **CHIEF JUSTICE**