

Transfer of Case not allowed

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Civil Transfer Application No. 27 of 2024

Manahil Imran & another.

Vs.

Mohammad Sadiq Khursheed

HIGH COURT OF SINDH

Composition of Bench. Single.

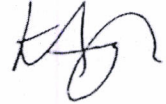
Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 06-08-2024

Decided on : 09-08-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

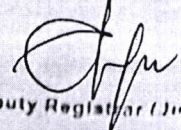
NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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PRESENTED ON
09.04.2024

Deputy Registrar (Judicial)

2/46

IN THE HIGH COURT OF SINDH AT KARACHI

Transfer Application No. - 27 /2024

Manahil Imran

D/o Imran Latif

Female, Muslim, Adult,

R/o House No. 1-B,

Gizri Boulevard Phase IV,

DHA, Karachi

Thorough her lawful attorney

Namely Imran Latif.

2) Hareem

D/o Sadiq Khurshid

Minor Through her mother

Mst. Manahil Sadiq

Applicant No. 1

25 years

.... Applicants

VERSUS

1) Mohammad Sadiq Khurshid

S/o Tabassum Khurshid,

Male, Muslim, Adult

R/o House No. 88/1,

Street No. 15, Khayaban-e-Seher

Phase VII, DHA

Karachi

.....Respondents

APPLICATION UNDER SECTION 24 CPC R/W SECTION
25-A OF FAMILY COURTS ACT, 1964 R/W 151 CPC FOR
TRANSFER OF APPEALS NO. 38/2024,

FACTS**Humbly Sheweth:**

- 1) It is most humbly prayed on behalf of Petitioners above named that this Hon'ble Court may be pleased to transfer the Family Appeals No. 38/2024 from the Court of Xiith

IN THE HIGH COURT OF SINDH AT KARACHI

CIVIL TRANSFER APPLICATION NO.27 OF 2024

Applicant: Manahil Imran through Ms. Asmaa Javaid,
Advocate

Respondent: Mohammad Sadiq Khursheed, through Mr.
Adil Channa, Advocate

Date of Hearing: 06.08.2024

Date of Order: 09.08.2024

ORDER

Mohammad Karim Khan Agha, J. Applicants have moved application under Section 24 CPC read with Section 25-A of Family Courts Act, 1964 r/w Section 151 CPC for transfer of Family Appeal No.38 of 2024 pending before the Court of XIIth Addl. District Judge, Karachi to any other court of competent jurisdiction.

2. Learned counsel for the applicants has submitted that the Court of XXth Civil / Family Judge (South) Karachi in G & W Application No.1868 of 2020 passed a detailed order dated 21.02.24 whereby subject to certain conditions the applicants were granted a Guardianship Certificate of Manahil Sadiq d/o Imran Latif. However, the Respondent No.1 challenged the aforesaid order and while hearing a miscellaneous application Court of XIIth Addl. District Judge (South) Karachi had passed an order dated 03.04.2024 whereby parts of the aforesaid order had been suspended. She further contended that the concerned Judge by passing order dated 03.04.2024 had already made up his mind through his interim order that the father should be Guardian of the child rather than mother and as such she contended that the appeal should be transferred to some other Court.

3. On the other hand learned counsel for the respondent contended that the applicants had not made any pleadings that the judge was biased against her and was only dissatisfied with some of the findings made in the order dated 03.04.2024 and this was not a ground for

transfer of the proceedings as the contentions of the applicants had been fully dealt with in order dated 03.04.2024 which was a detailed speaking order and that was not the ground for change of Judge simply because counsel for the applicants was not satisfied with some aspects of his decision.

4. I have heard learned counsel for applicants and respondent and perused the record and considered the relevant law.

5. It appears in this case that the main ground for the applicants losing faith in the Judge is that he has already made up his mind in respect of the appeal through his interim order which in part decided against applicant by citing the case of *Ms Shazia Akbar Ghalzai V Additional District Judge Islamabad East* (2021 MLD 2021 817 Islamabad) which found the father to be the natural guardian based on the particular facts and circumstances of that case.

6. In the case of *Mian Muhammad Rafiq Saigol vs BCCI and others* (1996 CLC 1930) it has been held that merely because an adverse judicial order had been passed against a party it would not serve to be a sufficient ground to justify the transfer of the case from one court to another. I am in full agreement with this line of reasoning since to proceed contrary to the same would mean that in each and every case in which a party receives an order which it considers adverse to it he could apply to transfer the case. To allow such a proposition in my view would in effect be an open invitation for unscrupulous applicants to seek to transfer a case if they felt that the decision was going against them and thereby not only aim to derail the decision but also unnecessarily prolong the case which would not equate with the concepts of ensuring either the efficient administration of justice or the right to an expeditious trial. It would be akin, in my view, to allowing a party on flimsy uncalled for grounds to seek to keep on changing the judge in his trial/appeal until he was of the view that the judge was favorable to him which is contrary to our system of justice where the parties have no right to pick the judge of their choice. Such conduct would also undermine the Judge's performance of their functions. In this case the applicants have only leveled bald allegations against the Judge. No evidence of bias has been pleaded. The fact that his order is interim in nature subject to the deciding of the appeals means that the Judge has not made up his mind as yet and the applicants when

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the appeals are heard will have the full opportunity to argue their case before the Judge based on the particular facts and circumstances of their case and distinguish any authority relied in the offending order with orders/judgments in their favour passed by DB's of other high courts and preferably the Supreme Court.

7. In the case of **Amir Altas Khan V State** (2002 SCMR 709) it was held that a party cannot claim the transfer of the case as a matter of routine or at his wishes unless it is shown from the record that in the circumstances a free and fair trial/appeal is not apparent from the face of the record. In my view the applicants have not been able to show from the record that a free and fair hearing of their appeal would not be possible.

8. Furthermore it was also held in the case of **Sameer Ehsanullah Makhzan and 3 other vs. Muhammad Asif Zaman and 3 others** (PLD 1993 Lahore 554) at page 557 paragraph-4 as under:-

"4. I have considered the arguments addressed by the learned counsel for the petitioners and have also perused the comments submitted by the learned Civil Judge. There is no cavil with the proposition that justice is not only to be done but it should appear to have been done and further that any genuine apprehension in the mind of the litigant which is based on valid and reasonable grounds that he shall not get justice at the hands of the Presiding Officers, will be a valid ground for transfer of a case from that Court. However it is equally important that the Courts should not be unnecessarily harassed merely on the basis of baseless apprehension, of reckless litigant, which is result of whims, surmises and conjectures. Learned Judicial Officers who preside the Court, have to be given a full protection against frivolous allegations in view of the onerous, noble and dignified duty they are performing while deciding the cases, and for performance whereof they are directly responsible to the Almighty Allah. They should not be allowed to be harassed and maligned unnecessarily by the litigants merely because they pass judicial orders against the said litigants." (bold added)

9. It also appears in the instant case that the offending order is only of an interim nature and as mentioned earlier the applicants will have the full opportunity of presenting their case when the appeals are heard by the appellant court which so far in my view has not displayed any kind of bias or favoritism towards any party to date in passing the offending order which was well reasoned and considered and addressed the applicants arguments.

10. In my view based on the facts and circumstance of this particular case the applicants have not been able to make out a case for the transfer of their case on account of any bias or unfairness or favoritism on the part of the Judge as would justify the transfer of their case and as such the transfer application is dismissed. However, the appellant court hearing the appeals related to this case is directed to decide all such appeals connected with this matter within three months of the date of this order through speaking orders. The office shall provide a copy of this order immediately to the learned Judge of the appellant court for its compliance.