ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Civil Transfer Application No.07 of 2018

DATE	**ORDER WITH SIGNATURE OF JUDGE(S)**

1. For orders on CMA-535/2018
2. For orders on CMA-536/2018
3. For katcha peshi.

15.03.2018.

Mr. Abdul Hakeem Memon, Advocate for applicant.

O R D E R

AGHA FAISAL, J: This matter is a civil transfer application instituted by the applicant, who is the defendant in Summary Suit 01 of 2016 pending before the Court of the learned Additional District Judge, Tando Muhammad Khan (hereinafter referred to as "Trial Court").

2. The applicant has filed the present application, seeking transfer of the said summary suit from the Court of learned Additional District Judge, Tando Muhammad Khan to any other Court at Tando Muhammad Khan or at Hyderabad.

3. The arguments of the learned Counsel in support of his application may be encapsulated as follows:

(i) That the applicant has no confidence in the learned Presiding Officer / trial Judge as it is argued that the trial Judge is biased.

(ii) It is argued that the plaintiff in the suit, who is a respondent herein, has claimed that the trial Judge shall favor the said plaintiff over the present applicant.

(iii) The learned Counsel states that a senior member of the judiciary has prevailed upon the learned Trial Court to issue findings unfavorable to the applicant.

4. This Court has heard the arguments of the learned Counsel for the applicant and perused the memorandum of application and is of the view that the applicant has made a concerted effort to scandalize the character of judicial officers. The memorandum of application refers to the learned trial Judge by name and the arguments of the learned counsel have cast unsubstantiated aspersions on a senior member of the judiciary.

5. It is the view of this Court that such conduct, although would not entitle an applicant to relief, could undermine the institution of the judiciary and hence such comportment cannot be appreciated.

6. The first ground for transfer raised by the learned counsel for the applicant is that of bias and the same has been deliberated upon in detail by the august Supreme Court in the case of *GOVERNMENT OF N.W.F.P THOUGH CHIEF SECRETARY AND ANOTHER VERSUS DR. HUSSAIN AHMED HAROON AND OTHERS,* reported as *2003 SCMR 104,* wherein it was maintained as follows:

> *"…It is an age-old fundamental principles of law that justice should not only be done but manifestly and undoubtedly it should seen to have been done. To achieve this objective/goal it is of prime importance that a Judge/person equipped with the authority of decision should not be having any sort of personal interest in the outcome of the matter under issue before him. The conduct of the proceedings should not generate any reasonable apprehension in the mind of a person that the deciding officer has harboured any grudge or bias agaisnt him. This principle that no person should be a judge in his own cause (memo debet esse in propria sua causa) was discussed threadbare in Dimes v. Grant Junction Canal Co. (1852) 3 H.L. Cas. 759). The learned Judges of this Court in a case reported as Federation of Pakistan v. Muhammad Akram Shaikh (1990 PSC 388) has highlighted the above principle after*

discussing the ratio of the aforesaid case. They have incorporated the dicta underlying this principle which are as under:-

"There is no doubt that any direct pecuniary interest, however, small in the subject of inquiry does disqualify a person from acting as a Judge in the matter." Blackburn, J. in R.v Rand (1986) LR 1 WB 230, 232.

"If he has any legal interest in the decision of the question one way he is disqualified no mater how small the interest may be" Lush, J. in Serjeant v. Dale (1877) 2 QBD 558, 567.

"….the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a Judge." Stephen, J. in R v. Farrant (1887) 20 ABD 58, 60.

"….a person who has a judicial duty to perform disqualifies himself from performing it if he has a pecuniary interest in the decision which he is about to give or a bias which renders him otherwise than an impartial Judge. If he has a pecuniary interest in the success of the accusation he must not be a Judge." Bown, L.J. in Lesson v. General of Medical Education. (1889) 43 Ch. D 366, 384,"

It is to be judged whether a reasonable person in the similar situation would assume the possibility of bias in the mind of the deciding officer. It is always a question of fact to be decided independently in each case. In the present case the doctors community though their Association was agitating from the very beginning agaisnt the posting of a non-technical person as Secretary Health. This issue was going on for a considerable period. They were having some demands as according to their assumption their career was at stake. In these circumstances it could not be said that their apprehension for the change of Authorized Officer was not reasonable when they all were voicing for the change. They were certainly having apprehension and foundation. In this regard it would be apt to reproduce the determination of the learned Judges reported in Manak Lal, Advocate v. Dr. Prem Chan Singhvi and others (PLD 1957 SC (India) 346) which is in the following terms:-

"It is well-settled that every member of judicial proceedings must be able to act judicially; and it is that Judges should be able to act impartially, objectively and without any bias. In such case the test is not whether in fact bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As C. v. Bath Justices (1926 App. Cases 586 at page 590):

> *'This rule has been asserted, not only in the case of Courts of Justice and other Judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others.'*
>
> *In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however, small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. The principle, says Halsbury, nemo debt esse judex in causa propria sua precludes a justice who is interested in the subject-matter of a dispute, from acting as a justice therein."(Halsbury's Laws of England; Vol.XXI, p.535, para. 952). In our opinion, there is and can be no doubt the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties." (Underlining is ours)."*

7. It is not sufficient to merely allege bias on the part of a learned Judge or restrict the assertion to generalized statements. The issue of bias in a judge is a very serious matter and in the very least cogent and specific particulars thereof must be pleaded by an applicant and the same may be bolstered with plausible corroboration.

8. The phrase *bias in a judge* has been dealt with in detail in the case of *ASIF ALI ZARDARI & ANOTHER V/S. THE STATE,* reported as *PLD 2001 SUPREME COURT 568,* and the relevant passage therefrom is reproduced herein below:

> *"18. The foremost question is what is 'bias'. Bias has been described in Corpus Juris Secundum, Volume X, pp. 354 and 355 as under:-*
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> *"BIAS.--Primarily, a diagonal or slant, especially of a seam, cut, or line across a fabric; and so derivatively, a leaning of the mind; a mental predilection or prejudice; anything which turns a man to a particular*

course; a particular influential power which sways the judgment; a preconceived opinion; a sort of emotion constituting untrustworthy partiality; bent, inclination, prepossession, propension, or tendency, which sways the mind toward one opinion rather than another; propensity toward an object, not leaving mind indifferent. "Bias" has been held synonymous with "partiality", and strictly to be distinguished from "prejudice". Under particular circumstances, the word has been described as a condition of mind; and has been held to refer, not to views entertained regarding a particular subject-matter, but to the mental attitude or disposition toward a particular person and to cover all varieties of personal hostility or prejudice him" (Emphasis provided).

Garner on Administrative Law, 4th Edition at page 122 has also attempted to define bias as a disqualification and in such context observed as follows:

"Not only is a person affected by an administrative decision entitled to have his case heard by the agency seized with its determination, but he may also insist on his case being heard by a fair Judge, one free from bias. Bias in this context has usually meant that the adjudicator must have no financial interest in the matter under dispute, but it is not necessarily so limited and allegations of bias have been upheld in circumstances where there was no question of any financial interest."

19. In this context, the following observations of Lord Denning M.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and others (1968) 3 All ER 304) would be relevant:

"A man may be disqualified from sitting in a judicial capacity on one of two grounds. First, a "direct pecuniary interest" in the subject-matter. Second, "bias" in favour of one side against the other.

So far as "pecuniary interest" is concerned, I agree with the Divisional Court that there is no evidence that Mr. John Lannon had any direct pecuniary interest in the suit. He had no interest in any of the flats in Oakwood Court. The only possible interest was his father's interest in having the rent of 55, Regency Lodge reduced. It was put in this way: if the committee reduced the rents of Oakwood Court, those rents would e used as "comparable" for Regency Lodge, and might influence their being put lower than they otherwise would be. Even if we identify the son's interest with the father's. I think that this is too remote. It is neither direct nor certain. It is indirect and uncertain.

> *So far as bias is concerned, it was acknowledged that there was no actual bias on the part of Mr. Lannon, and no want of good faith. But it was said that there was, albeit unconscious, area of likelihood of bias. This is a matter on which the law is not altogether clear; but I start with the oft-repeated saying of LORD HEWART, C.J., in R.V. Sussex Justices, Ex p. McCarthy:*
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> *"… it is not merely of some importance, but of fundamental important, that justice should both e done and be manifestly seen to be done"*
>
> *20. In our own context, the Code of Conduct framed by the Supreme Judicial Council under Article 128(4) of the erstwhile Constitution of Pakistan, 1962 for the Judges of the Supreme Court and the High Courts in Pakistan provides in Article IV as under:--*
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> *"A Judge must decline resolutely to act in a case involving his own interest, including those of persons whom he regards and treats as near relatives or close friends.*
>
> *A Judge must refuse to deal with any case in which he has a connection with one party or its lawyer more than the other, or even with both parties and their lawyers.*
>
> *To ensure that justice is not only done, but is also to be done, a judge must avoid all possibility of his opinion or action in any case being swayed by any consideration of personal advantage, either direct or indirect."*

9. The allegations raised by the learned Counsel during the arguments and those contained in the affidavit filed alongwith the present application, contain generalized statements and the same cannot be made the basis to entertain or sustain the allegation of bias against a Judge.

10. The contention that the respondent, in the present matter, claiming that the case shall be decided in his favor is prima facie unsubstantiated self-serving hearsay and no weightage could be apportioned to such a claim.

11. This Court is constrained to deprecate the allegations made upon a senior member of the judiciary by the learned counsel for the applicant. This allegation, much like the previous two allegations, was not supported by an iota of corroboration and as such the effort of the learned Counsel to scandalize the proceedings could not be permitted by this Court.

12. There appear to be no other grounds pleaded in the memorandum of application or in the affidavit in support thereof.

13. There is also no corroboration of any sort whatsoever, available on the file, to support the pleadings of the applicant.

14. It is borne from the arguments (and the record) that the primary allegation of the applicant, being that the learned trial Judge is biased, is merely a general statement and no particulars (or corroboration) have been pleaded in respect thereof.

15. The second allegation, that the respondent herein is claiming proximity with the learned trial Judge, is predicated upon the alleged and uncorroborated statement of the said respondent. The applicant has also failed to demonstrate how he came to know about the same.

16. The third allegation, pertaining to the alleged interference of a senior member of the judiciary, is a scandalous statement and no particulars (or corroboration) have been pleaded in respect thereof either. It has also not been demonstrated as to how the applicant gained such information.

17. It is well settled law that the transfer of a matter from one Court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interests of justice.

18. The above ratio was relied upon in the case of *ALL PAKISTAN NEWSPAPERS SOCIETY & OTHERS V/S. FEDERATION OF PAKISTAN & OTHERS,* reported as *PLD 2012 SUPREME COURT 1.*

19. It is the considered view of this Court that an unmerited transfer of a case from one court to another would tantamount to an expression of no confidence in the said trial Judge.

20. In view of the foregoing, this civil transfer application, along with listed applications, is dismissed in limine.

21. The office is directed to communicate this order to the learned Trial Court for necessary reference and record.

Announced in open Court.

JUDGE

Shahid