ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Civil Transfer Application No.15 of 2016

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

For katcha peshi.

27.02.2018.

None present for the applicant.
Mr. Wali Muhammad Jamari, Assistant A.G

O R D E R

AGHA FAISAL, J: The present civil transfer application was preferred in 2016, in respect of a civil appeal instituted in 2013, seeking *inter alia* the following relief:

> *"To transfer Civil Appeal No.23 of 2013 [Muhammad Warial Vs. Government of Sindh and others] between the above parties from the Court of learned IInd Additional District Judge, Shaheed Benazirabad, to any other competent Court for disposal on merits."*

2. The matter was called earlier in the morning, however, none appeared for the applicant and in the interest of justice the matter was kept aside with a direction for the same to be taken up in the second session. The matter was then taken up again during second session and once again no one appeared on behalf of the applicant in this matter.

3. This is a two years old matter and it appears that the applicant is no longer interested in proceeding herewith and therefore it may otherwise be a fit case for dismissal for non-prosecution. However, in the interests of justice, it was considered proper by this Court to consider the relevant record and then pass appropriate orders on the merits hereof.

4. The allegation leveled by the applicant is that the respondent No.5(a) claims that he has approached the Presiding Officer of the appellate forum and further claims of having been assured of favorable findings in the said matter.

5. The other allegation is that the attitude of the Presiding Officer with the applicant is not good.

6. There appears to be no other grounds pleaded in the memorandum of application in support of the applicant's prayer.

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

8. It is borne from the record that the primary allegation of the petitioner, that the respondent No. 5(a) is claiming unlawful proximity with the learned Presiding Officer, is predicated upon the alleged and uncorroborated statement of the said respondent. The applicant has failed to plead how came to know about the same.

9. The second allegation, pertaining to the alleged contrary attitude of the learned Presiding Officer, is merely a general statement and no particulars (or corroboration) have been pleaded in respect thereof.

10. 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.

11. The august Supreme Court has delved into the issue of transfer of adjudication fori and in such regard it was held 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,* 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 reorrted 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:-*
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> *"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.*
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> *"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 interst 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.*
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> *"….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,"*
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> *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)."

12. 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.

13. 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 it stipulates as follows:

> *"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).*
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> *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:*
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> *"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."*
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> *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:

"… 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:--

"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."

14. 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.*

15. It is patently evident from the foregoing that the allegation of proximate contact, between the learned Presiding Officer and the stated respondent, is prima facie hearsay and that such an allegation can in no manner be construed to attribute the vice of bias to the learned Judge.

16. The secondary allegation of improper conduct, vis a vis the applicant herein, appears also to be devoid of any merit as the same is neither pleaded with proper particulars nor supported by any corroboration available on the file.

17. The learned Presiding Officer was pleased to submit his comments herein, in compliance with the order of this Court dated 26-08-2016, and the content thereof is reproduced herein below:

> *"It is respectfully submitted that this is Civil matter and if appellant namely Muhammad Pariyal was not satisfied with this court he had opportunity to move Transfer application before Honourable District & Sessions Judge, but he had not availed the same and directly went to Honourable High Court by filing Civil Transfer Application No.15/2016 which show his delay practice or his malafide to pressurize the court.*
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> *It is further submitted, the appellant filed Civil Appeal on 22.11.2013 which was admitted by my predecessor on 07.12.2013. Matter is fixed for final arguments since February, 2016. Meanwhile, learned advocate for appellant filed application U/O 6 rule 17 CPC R/W Section 151 CPC on 21.4.2016 which was allowed by consent on same day. Subsequently the learned advocate for appellant filed amended Title with delay of about 3 months because he is interested to linger on the matter. Subsequently, Mst. Naseeb Khatoon respondent No.5 also expired and her legal heirs also included on the basis of statement filed by advocate for appellant on 25.7.2016. Matter again fixed for final arguments on 25.7.2016, 11.8.2016, 24.8.2016, 07.09.2016 but learned advocate for appellant used to get adjournment on one or other pretext.*

> *Today viz. 07.09.2016 matter was fixed for final arguments but learned advocate for appellant remained absent therefore matter was adjourned to 08.09.2016 viz. tomorrow, meanwhile today at about 01:30 p.m. undersigned received copy of Transfer Application in which appellant has claimed that undersigned has been approached by respondent No.5(a) which is extremely shocked for undersigned. The timings of the sitting in court of undersigned as from 08:30 a.m. up to 03:00/4:00 p.m. continuously without any break, no question is arisen as undersigned pressurized appellant to withdraw his appeal or neither any person approached to undersigned nor to staff of this Court.*
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> *Despite of it the allegations of appellant in Transfer Application are false but there is humble request of undersigned that if your Honour may transfer the Civil Appeal No.123 / 2013 from this Court, undersigned has no objection. There is further information for appellant and his advocate as undersigned is also going to file reference of transfer to Honourable District & Sessions Judge, to stop delay tactics of parties who used to their malice practice against Judges to achieve their goals and they have no care as what consequences will create in carrier of Judges by these filing false applications. (Copy of reference of transfer sent by undersigned to Honourable District & Sessions Court is also annexed herewith).”*

18. The allegations, of the applicant herein, have been squarely denied by the learned Presiding Officer and further that she has graciously conveyed her acquiescence to any transfer of the subject case to any other Court.

19. It is the view of this Court that the gracious consent of a learned Judge to a proposed transfer of a case therefrom must be appreciated but that such consent may not be made a ground for such a transfer.

20. A similar issue was dealt with in the case of *MESSRS BANK OF BAHAWALPUR LTD. V/S. MUHAMMAD YOUSAF,* reported as *1994 MLD 1153,* wherein it was maintained as follows:

> *“5. Learned counsel for the petitioner has not been able to persuade me that it is a fit case for interference under section 115, C.P.C. as the learned District Judge, Sheikhupura has not been shown to have committed any material irregularity and illegality*

> *in exercise of discretionary jurisdiction vested in it under the law.*
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> *6. Learned counsel for the petitioner submitted that this revision petition may be considered as an application directly made before this Court under section 24 of the C.P.C. therefore, the case may be transferred from the Civil Court at Sheikhupura to any other Civil Court at Lahore.*
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> *7. I have given serious consideration to this prayer. The grounds urged in this revision petition for the transfer of the case are similar to those which I have already discussed above. Merely because the learned Civil Judge expressed the view that he had no objection if the case was transferred from his Court, would not be a ground to transfer the case, which would amount to expression of no confidence in the learned Civil Judge on the mere assertions of the parties.*
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> *8. No ground has been made out for transfer of the case from Sheikhupura to Lahore either.*
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> *9. For the foregoing reasons, the revision petition has no force which is accordingly dismissed. The parties are left to bear their own costs." (*Underlining added for emphasis*).*

21. It is also the considered view of this Court that an unmeritted transfer of a case from one court to another would tantamount to an expression of no confidence in the said learned Judge.

22. In view of the foregoing, this civil transfer application, along with listed applications, is dismissed as there are no cogent grounds available in the pleadings or on the record justifying the grant thereof.

23. The office is directed to communicate this order directly to the learned appellate Court for necessary reference and record.

Announced in open Court.

JUDGE

Shahid