

IN THE HIGH COURT OF SINDH KARACHI

Civil Revision Application No. 61 of 2013

Date	Order with signature of Judge
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For Katcha Peshi :

Applicant : S. Shuaib Ahmed,  
through Syed Hassan Imam Advocate.

Respondents : Iqbal Ahmed and Zahid, called absent.

Date of hearing : 21.05.2015.  
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**NADEEM AKHTAR, J.** – The applicant has impugned the order passed on 05.01.2013 by the learned District Judge Karachi South, whereby his Civil Transfer Application No.54 of 2012 was dismissed. The applicant had filed the said transfer application praying that the contempt application filed by him in his Civil Suit No.1040 of 2011, be transferred from the Court of XIV<sup>th</sup> Civil Judge Karachi South to any other Court.

2. The relevant facts giving rise to this Civil Revision Application, as averred therein, are that the applicant filed the above mentioned Suit for injunction against the respondents, wherein he also filed an injunction application praying that the respondents / defendants be restrained from making additions or alterations in the portion of Shop No.27 facing Amil Street, situated in building No. RB9/21/1, Ram Bagh Quarters, Karachi, or from demolishing the same. On 25.11.2011, an ad-interim order was passed on this application by the learned trial Court whereby the parties were directed to maintain status quo. Since the status quo order was violated by the respondents according to the applicant, he filed a contempt application under Order XXXIX Rule 2(3) CPC. Meanwhile, the applicant filed an application for withdrawal of the Suit with permission to file a fresh one, which was allowed by the trial Court vide order dated 14.04.2012. However, his contempt application was kept pending. The applicant has alleged that there was inordinate delay on the part of the trial Court in hearing his contempt application due to which the respondents continued to violate the status quo order. He has further alleged that the trial Court deliberately avoided hearing the said application in order to accommodate the respondents. In this background, the transfer application was filed by the applicant, which was dismissed through the impugned order.

3. Syed Hassan Imam, learned counsel for the applicant, contended that the applicant's transfer application was dismissed on the sole ground that he had withdrawn his Suit and as such his injunction application stood disposed of. He submitted that the learned District Judge failed to appreciate that the contempt application was kept alive by the trial Court while allowing the applicant to withdraw the Suit. He further submitted that the grounds urged by the applicant for transfer of the contempt application and the allegations made by him against the trial Court, were not appreciated by the learned District Judge. In the end, it was urged that the impugned order is illegal and contrary to the material available on record.

4. Notice was ordered to be issued to the respondents on 01.10.2013. As per the bailiff's report dated 26.11.2013, they were duly served on 25.11.2013. Despite proper service, the respondents remained absent and did not contest these proceedings.

5. I have heard the learned counsel for the applicant and have also examined the material available on record, particularly the impugned order. Learned counsel for the applicant is correct in saying that the transfer application was dismissed on the sole ground that the applicant had withdrawn his Suit. It was held by the learned District Judge that in view of withdrawal of the Suit, the cause of action came to an end, and therefore, the transfer of contempt application was not justified. I am afraid this view of the learned District Judge is not correct ; firstly, as while allowing the application for withdrawal of the Suit with permission to file a fresh one, the trial Court had clearly observed that the contempt application shall remain pending ; and, secondly, it is well-settled that application / proceedings of contempt of Court are independent proceedings as the matter of contempt is between the Court and the alleged contemnor, and such proceedings may continue even after disposal of the proceedings in which contempt has been committed. Dismissal of the transfer application on the above ground was, therefore, not warranted, and as such the impugned order is liable to be set aside.

6. Foregoing are the reasons of the short order announced by me on 21.05.2015, whereby this Civil Revision Application was allowed and the learned District Judge Karachi South was directed to decide the applicant's Civil Transfer Application No.54 of 2012 afresh in accordance with law.

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