

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. Nos.S-1345 and 1346 of 2019

Dr. Muhammad Azhar Imam  
Versus  
Mst. Nida Jamil & others

Date	Order with signature of Judge
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**Date of hearing: 27.01.2020**

Mr. Muhammad Mushtaq for petitioner.  
Mr. Fayyaz A. Awan for respondent No.1.

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**Muhammad Shafi Siddiqui, J.**- These two petitions impugn orders passed on transfer applications filed by respondent No.1 in relation to the two suits arising out of her family disputes. The cases being for recovery of maintenance and appointment of guardian of the ward were pending adjudication before Family Judge XVI Karachi East.

I have heard the learned counsel and perused material available on record.

In terms of the pleadings of transfer applications, the Court where the suits were pending was lying vacant and the Presiding Officer was on leave for three months. These family disputes are required to be disposed of expeditiously, being for maintenance and appointment of guardian. Consequently the application under section 25-A of West Pakistan Family Courts Act, 1964 was filed which was considered by District Judge and was consequently allowed by withdrawing the subject suit from the Court of XVI-Family Judge Karachi East to XXIII-Judicial Magistrate Karachi East for their disposal in accordance with the law.

The only grievance of the petitioner was that in terms of Section 25-A of the ibid Act that relates to transfer of cases, only the High Court

is empowered to consider the application for transfer of cases and not the District Judge. Section 25-A, insofar as subsection (a) and (b) are concerned, certainly pertains to the transfer of any suit or proceedings under the Act from one Family Court to another Family Court in the same district or from Family Court of one district to Family Court of another district is to be regulated by this Court. Similar is the case when an appeal is deemed to be pending under the Act and is to be transferred from one district Court to another.

However, Section 25(2) empowers District Court to order, either on the application of any party or of its own accord, to transfer the suit or proceedings under the subject Act from one Family Court to another Family Court in a district or to itself and dispose it of as a family Court. This is sufficient answer to the question raised by learned counsel for petitioner and Section 25(2)&(2A) for clarity is reproduced as under:-

*“(2) A District Court may, either on the application of any party or of its own accord, by an order in writing, transfer any suit or proceedings under this Act from one Family Court to another Family Court in a district or to itself and dispose it of as Family Court.*

*(2A) Where a Family Court remains vacant or the presiding officer remains on leave or absent for any reason, except due to vacations, for more than thirty days, a District Court may, either on the application of any party or of its own accord, by order in writing, transfer any suit or proceeding from such Family Court to another Family Court in a District or to itself and dispose it of as a Family Court.”*

Above new subsection (2A) was inserted by Amendment Ordinance LV of 2002 dated 01.10.2002 where in a situation when a Family Court is lying vacant or the presiding officer remains on leave or absent for any reason for more than 30 days, a District Court may, either on application of any party or of its own accord, by order in writing, transfer any suit or proceedings from such Family Court to another Family Court in a district or to itself and dispose it of as a Family Court. The amendment is not denied by petitioner’s counsel.

The situation in the instant case is such that the Court is lying vacant and the presiding officer is on leave for three months, which fact is incorporated in paragraph 3 of the transfer application itself. A link judge or incharge judge is not a regular presiding officer of the Court and consequently there was a necessity of such transfer to check unnecessary delay in the proceedings which enabled/prompted the respondent to move an application to cause transfer of the case.

In the above circumstances, I do not see any infirmity in the impugned order allowing transfer application in consideration of section 25-A(2) & (2A) of the West Pakistan Family Court Act, 1964. The petitions as such are dismissed along with listed application.

Above are reasons of my short order dated 27.01.2020.

Dated:

**Judge**