

*Order Sheet*  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Civil Transfer Application No. 24 of 2018**

Date	Order with signature of Judge
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Raja Qasit Nawaz, advocate for the applicant.

None present for the respondents.

Date of hearing : 27.09.2022

**ORDER**

**NADEEM AKHTAR, J.** – Through this Civil Transfer Application, the applicant has prayed that his Civil Appeal No.200/2012 be transferred from the Court of VII<sup>th</sup> Additional District Judge Karachi East to the competent Court in District South Karachi.

2. The case has a checkered history. The relevant facts for deciding the instant Transfer Application are that the applicant filed Suit No.702/1989 against the respondents for specific performance and injunction at the original side of this Court. Due to the change in the pecuniary jurisdiction by virtue of the Sindh Civil Courts (Amendment) Act, 1996, the Suit was transferred to VI<sup>th</sup> Senior Civil Judge Karachi East (**'SCJ'**) and was renumbered as Suit No.1579/1996. On 19.04.2001, the Suit was dismissed for non-prosecution. As no court motion notice was issued to or received by the applicant / plaintiff, he was not aware either about the transfer of his Suit to the SCJ or its dismissal for non-prosecution. When he came to know about the dismissal of his Suit, he filed an application for its restoration and also filed an application seeking its transfer from District East to the competent Court having jurisdiction in District South Karachi. Instead of passing an order on his said application for restoration, the SCJ, by acknowledging that he did not have the jurisdiction, returned the application to the applicant for presenting it before the competent Court in District South. The said order was challenged by the applicant in Civil Revision Application No.57/2003 which was allowed by II<sup>nd</sup> Additional District Judge Karachi East (**'ADJ'**) vide order dated 28.02.2006 whereby the Suit was restored by observing that the SCJ had no jurisdiction to return the application or even to entertain the Suit or to dismiss it for non-prosecution ; the order of dismissal of the Suit by SCJ was “ineffective” due to lack of territorial jurisdiction ; and, instead of returning the application, the SCJ should have made a reference to the District Judge Karachi East for transferring the Suit to the Court having jurisdiction in respect thereof.

3. As the above order of ADJ was not complied with, the applicant filed an application before the District Judge Karachi East seeking its compliance. Instead of deciding the said application, the said District Judge “advised” the applicant to approach the “proper forum” for this purpose. Meanwhile, one Gulzar Mehmood filed an application before the SCJ as an intervener and when his said application was fixed for hearing, the SCJ once again dismissed the Suit for non-prosecution. The applicant filed an application for restoration of the Suit which was dismissed by the SCJ. Against the said dismissal, the applicant filed Civil Appeal No.200/2012 before the District Judge Karachi East wherein the said Gulzar Mehmood filed an application as an intervener which was allowed. However, the said order was set aside by this Court vide order dated 08.10.2018 passed in Civil Revision Application No.38/2016 filed by the applicant.

4. As the notices issued to the respondents in the instant matter could not be served upon them despite repeated attempts through various modes, they were ordered, vide order dated 01.11.2021, to be served through substituted service by way of publication in newspaper. In pursuance of the said order, the notice was published on 13.12.2021 in Urdu daily ‘Jang’. Despite the above, the respondents have chosen to remain absent.

5. I have heard the learned counsel for the applicant and have minutely examined the material available on record. It is apparent from the record that the order passed by the ADJ on 28.02.2006 attained finality long ago whereby the Suit was restored by the ADJ by holding that the SCJ had no jurisdiction to return the application or even to entertain the Suit or to dismiss it for non-prosecution. It was also held by the ADJ that the order of dismissal of the Suit was “ineffective” due to lack of territorial jurisdiction, and instead of returning the application, the SCJ ought to have made a reference to the District Judge Karachi East for transferring the Suit to the Court having jurisdiction in respect thereof. It is a matter of record that the aforesaid order has still not been complied with by the SCJ as no reference was ever sent by him to the District Judge Karachi East ; and, when the applicant himself approached the said District Judge, he was advised to approach the proper forum. The question of transferring the Suit to the Court of competent jurisdiction was an administrative one for which proper procedure ought to have been followed by the Court exercising such administrative powers. To my mind, the applicant adopted the proper course by approaching the District Judge Karachi East who was duty-

bound to pass a speaking order thereon. However, instead of passing an appropriate order, he merely “advised” the applicant to approach the “proper forum” for this purpose. It may be observed that it was not the function or duty of the District Judge to advise the applicant, and his duty was to pass an appropriate speaking order on the application. By not discharging such duty, the District Judge had failed in exercising the jurisdiction vested in him by law.

6. It may be observed that the Suit was transferred from the original side of this Court to the lower Court by operation of law, and the applicant or any of the parties to the Suit did not have any say or choice either in the transfer itself or in choosing the transferee Court. In fact, it was the duty of the transferee District Judge, who in this case was the District Judge Karachi East at the relevant time, to ascertain whether the Suit received from this Court by his office fell within the jurisdiction of his district or not ; and, if the Suit was not within the jurisdiction of his district, he ought to have taken appropriate steps according to law at the earliest stage. It is extremely unfortunate that the Suit transferred in the year 1996 could not proceed for the last twenty six (26) years only because of the mishandling by the lower Courts concerned and not for any fault of the applicant / plaintiff.

7. Since the SCJ did not have the territorial jurisdiction to entertain or adjudicate upon the Suit, as held by the ADJ in his order dated 28.02.2006 and acknowledged by the SCJ himself, both the orders of its dismissal for non-prosecution passed by the SCJ were *coram non judice* and void. Therefore, the Suit is still alive and is pending before the SCJ. In this view of the matter, Civil Appeal No.200/2012 filed by the applicant against the second order of dismissal of the Suit for non-prosecution has become infructuous, and as such its transfer would be meaningless and an exercise in futility. It is the Suit that needs to be transferred to the Court of competent jurisdiction. Learned counsel for the applicant has placed on record a copy of Office Order No.A/S/102 of 2020 dated 08.01.2020 issued by the office of the learned District Judge Karachi South showing that the immovable property / subject matter of the Suit is situated in District South and not in District East. Thus, the Suit ought to have been transferred in the first instance to the competent Court in District South.

8. In the above circumstances, Suit No.1579 of 1996 (Dr. Muhammad Bashir Qasim V/S Mrs. Farida Bano) pending before the VI<sup>th</sup> Senior Civil Judge Karachi East is transferred forthwith to the competent Court in District South. The learned District Judge Karachi South shall ensure that the above Suit is immediately assigned / transferred to the Court in his district having the

territorial jurisdiction in respect of the immovable property / subject matter of the Suit, and is decided within six (06) months strictly in accordance with law. This Civil Transfer Application is allowed in the above terms with no order as to costs.

Let this order be communicated forthwith to the learned District Judge Karachi South and the learned District Judge Karachi East for compliance.

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