

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD**

Civil Transfer Appl. No. 08 of 2023

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DATE	ORDER WITH SIGNATURE OF JUDGE
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28.04.2023

For hearing of CMA 984/23  
For hearing of main case

Mr. Mehboob Ali Leghari, Advocate for applicant  
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J .** - Through instant Civil Transfer Application, the applicant has prayed for transfer of Civil Appeal No. 39 of 2021 from the Court of learned 2<sup>nd</sup> Additional District Judge, Umerkot to any Court at Umerkot having jurisdiction.

2. Brief facts of the case are that respondent No.1 filed Suit for Specific Performance of Contract and Permanent Injunction against the applicant. In the said suit applicant along with written statement filed an application under Order VII Rule 11 CPC. The trial Court allowed the application and rejected the plaint. Respondent No.1 being aggrieved by and dissatisfied with the aforesaid decision filed Civil Appeal No. 39 of 2021 before learned IInd Additional District Judge, Umerkot; and during the proceedings before the appellate Court, the applicant reposed no confidence against the presiding officer on the premise that he forced the applicant to transfer the subject land in favor of private respondent, which suggestion was declined by the applicant; that on 29.9.2022 the matter was taken up in Chamber when the Presiding officer called the applicant and private respondent and directed them to file a joint statement for the aforesaid purpose, however, the applicant refused to sign the statement, which action triggered the cause to file transfer application; that the applicant has lost confidence upon the Presiding Officer of the appellate court on the ground that he will not get justice at his hands. The applicant in his

abortive attempt failed to convince the District Judge to transfer Civil Appeal No. 39 of 2021 to another Judge; therefore, he dismissed Civil Transfer Application No.1 of 2023 moved by applicant with certain observation vide order dated 8.4.2023, compelling the applicant to file the instant Civil Transfer Application. An excerpt of the order is reproduced as under:-

“I have given my anxious consideration to the submissions advanced by parties’ counsel. Learned Additional Sessions Judge-II, Umerkot in his comments has vehemently denied the allegations leveled against him. It is matter of record that ground reproduced above is contrary to the joint statement dated 29.9.2022 duly signed by both parties and their learned Advocates. It is also pertinent to mention here that had there been so as alleged by learned counsel for the applicant, as to who prevented him from filling his personal affidavit to substantiate the version. It is settled principle of law that transfer of a case is to be allowed only in exceptional circumstances where the ground urged are based on strong reasons and evidence. If this practice is not followed strictly, the parties are likely to take undue advantage by filling applications for transfer of their cases on baseless grounds. Interference in the working of the learned trial Courts, on fallacious grounds would give rise to a sense of insecurity amongst the Judicial Officers and in such eventuality the Judicial Officer may not be able to work with required vigor. Mere artificial and baseless apprehensions are not sufficient to seek transfer of case.

In view of what has been discussed above, I do not find any substance in the transfer application having no legal force, therefore, it is hereby dismissed. The learned Additional Sessions Judge-II, Umerkot is directed to proceed with the appeal having no fear in the mind except of Allah Almighty but strictly on merits, in accordance with law and without being prejudiced by the scandalous conduct of the applicant.”

3. Mr. Mehboob Ali Leghari learned counsel for the applicant argued that respondent No.1 is highly influential and the Presiding Officer of Appellate Court is supporting him without lawful authority; that the attitude of Presiding Officer towards the applicant is hostile and more favourable towards private respondent as the applicant failed to oblige the Presiding Officer to sign the statement which was drafted on the dication of the Presiding Officer; that the applicant has no trust upon the Presiding Officer of Appellate Court as he has failed to impart justice and has crossed all the judicial norms to favour a private party; therefore, he had filed Civil Transfer Application before District Judge, Umerkot and thereafter he has approached this court for the same relief, so that an independent Judge could hear the appeal and decide in accordance with law.

4. None appeared on behalf of the private respondent though notice has been issued.

5. Learned A.A.G. has opposed the application and supported the impugned Order passed by the learned District Judge.

6. I have heard learned counsel for the applicant and learned A.A.G on the subject issue and perused the record as well as the comments filed by the presiding officer.

7. The power to transfer the proceedings from one court to another is provided in Section 24 C.P.C. The said power is vested in the High Court or District Court as may be applicable in the circumstances.

8. It is well-settled law that 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 interest of justice. However, it is an accepted judicial norm that the Judges have the choice to hear a matter in the sense that the Judge himself can recuse from the case if the Judge has the feeling that one of the parties to the proceeding may have a reasonable apprehension of bias if the proceedings should go on before the particular Judge, may be for a variety of reasons such as a previous acquaintance of one of the parties to the proceedings with the Judge which may give rise to a reasonable apprehension of bias on the part of the other party, irrespective of the fact as to whether the Judge is biased or not; the Judge having earlier dealt with the subject matter of the proceedings before the Court, having been involved in the proceedings at an earlier stage in any capacity.

9. A Judge shall not sit in appeal over his judgment, order, or decision or even the Judge having expressed his earlier view in respect of the subject matter before him in any other context. But, in so far as the proceedings before the trial courts are concerned, it is strictly determined as per the provisions of the Code, particularly having regard to the provisions of Sections of the Code of Civil Procedure. What needs to be observed and pointed out in the scheme of the Code of Civil Procedure is that the judges of the subordinate judiciary, do not have the power to recuse themselves from the suit or appellate proceedings pending before the Court over which they preside.

10. In principle all judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind; and, inspire confidence in the impartiality of the Court proceedings.

11. Primarily, the conduct of proceedings by a Judge should not generate any reasonable apprehension in the mind of a litigant that the learned Judge or the Presiding Officer was/is biased or his mind was/is prejudiced. However, apprehension of bias, in my humble view, cannot be extended to judicial bias.

12. Since the presiding officer, while filing comments has expressed an adverse opinion against the applicant, perhaps due to the allegations, which prima-facie show that they are now at loggerheads. An excerpt of the comments is reproduced as under:-

“On the basis of unrebuttable, legal and factual aspects of case, it is stated that the applicant Awais Ali at the instructions of some miscreants mind has attempted to create disturbance in the judicial functions of the court for which he needs to be accounted and with a view to maintain the decorum of the court. The applicant deserves to be prosecuted under section 193 PPC for filing maliciously false application for leveling contemptuous allegations upon the Court. Besides, he shall be saddled with fine for filing false applications. It is worth to mention that the undersigned after taking over charge of Model Civil Appellate Court has decided all old civil cases which were pending since more than two decades and presently only 12 civil appeals are pending which will be decided expeditiously and no one has filed any complaint or transfer applications since my posting at Umerkot.”

13. In such circumstances, without prejudice to the stance of presiding officer as well as the findings of the learned District Judge in his order, the judicial propriety demands that the subject Civil Appeal No.39 of 2021 pending before the court of learned 2<sup>nd</sup> Additional District Judge, Umerkot may be transferred to any Court at Umerkot having jurisdiction which appeal shall be heard and decided without being influenced by the observation recorded by the District Judge within one-month positively. The learned District Judge Umerkot shall issue necessary administrative directions in this regard.

This Civil Transfer Application stands disposed of.

JUDGE