

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev. Application No.S-260 of 2023

Applicants : Zulfiqar Ali Shah through Mr. Haji
Abdullah Memon, advocate

Respondent No.2 : Syed Imdad Hussain Shah through LRs
and another through Mr. Sarfraz A.
Akhund, advocate.

P.O Sindh and others : Mr. Ahmed Ali Shah, Assistant Advocate
General

Date of hearing : 03.05.2024

Date of Decision : 03.05.2024

ORDER

ARBAB ALI HAKRO, J.- Through the present Civil Revision Application, the applicant has challenged the Order dated November 02, 2023 (hereinafter referred to as the "impugned order") passed by the learned District Judge, Sukkur. The impugned Order dismissed the application filed by the applicant seeking the transfer of F.C. Suit No. 30 of 2019 from the Court of the Senior Civil Judge, Rohri, to another court of competent jurisdiction.

2. In summary, the case facts are that the applicant initiated a suit for Specific Performance of Contract and Permanent Injunction before the trial court. While the suit was pending, the applicant filed an application under Section 24 C.P.C, seeking the transfer of the suit from the Court of the Senior Civil Judge Rohri to another competent court. The basis for this request was the applicant's perception that the Presiding Officer of the trial court was biased towards the opposing party and had repeatedly suggested the dismissal of his suit.

3. The learned District Judge sought comments from the trial Court and directed the applicant to provide copies of the case diaries,

which the applicant duly submitted. However, on November 02, 2023, when the Transfer Application was fixed for hearing, the applicant did not appear to argue the transfer application until 12:30 p.m. As a result, the learned District Judge dismissed the Transfer Application vide impugned Order dated November 02, 2023, against which the present Revision Application has been filed.

4. I have heard the arguments of the parties and also perused the record with their able assistance.

5. The transfer of a case on the grounds of bias refers to the process where a litigant seeks to move their case from one Court to another due to perceived prejudice or favouritism from the Presiding Officer. This bias can compromise the impartiality of the trial and potentially affect its outcome. In this context, bias can be categorized into three types: -

(a) Bias in the Subject-Matter: This occurs when the judge has a direct connection with the litigation, either as a party or through a 'legal interest'. A 'legal interest' implies that the judge is in a position that necessitates the assumption of bias.

(b) Pecuniary Interest: This type of bias arises when a judge has a financial interest in the cause. Regardless of how slight this interest may be, it will disqualify the judge, even if it is not proved that such interest has affected the decision. The rationale behind this is to ensure the absolute impartiality of the judge. Therefore, if a person having such interest sits as one of the judges, the decision is vitiated.

(c) Personal Bias: This type of bias occurs when a judge has a personal bias towards a party due to a relationship or personal hostility as a result of events happening either before or during the trial. Whenever there is an allegation of personal bias, the question to be satisfied is - "Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial?" The test is whether there is a 'real likelihood of prejudice'. It does not require certainty. 'Real likelihood'

is the apprehension of a reasonable man apprised of the facts and not the suspicion of fools or 'capricious persons'.

6. In light of the aforementioned categories of bias, it can be conclusively stated that the applicant has not successfully established any bias on the part of the learned Presiding Officer of the trial Court. The applicant's assertions that the Presiding Officer is favouring the opposing party and has repeatedly suggested the dismissal of his suit do not provide sufficient grounds for transferring the case from one Court to another, as these claims are not substantiated by any evidence. To establish bias against a Judge, it is imperative that an act or expression of the judge, which is visible and tangible, is demonstrated to have a potential adverse effect on the case. Therefore, a bald statement without supporting evidence cannot form the basis for transferring a case. An application for the transfer of a case can indeed be filed when a party has sufficient reasons, grounds, and evidence in his possession regarding the pecuniary interest or bias of the Judicial Officer. However, in the present case, these elements are conspicuously absent. Therefore, the application for the case transfer does not hold merit under the given circumstances.

7. Upon examination of the allegations made in the application, it becomes evident that no substantial evidence has been attached or annexed with the application for the Case transfer. In contrast, the comments provided by the trial Court before the learned District Judge reveal that the issues in the suit were framed on March 13, 2021. However, the plaintiff/applicant has yet to adduce his evidence and consistently moves adjournment applications. In relation to the moving of adjournment applications, the applicant himself has conceded in the instant Revision Application.

8. Additionally, it is important to note that the transfer of a case from one Court to another indirectly questions the competence and integrity of the judge from whom the case is sought to be transferred. The law is unequivocal in this regard - a litigant cannot choose a Judge

or Court of his preference. The choice of the Judge or the Court is not a privilege accorded to the litigant but is determined by jurisdictional rules and legal procedures. Any deviation from this principle would compromise the fairness and impartiality of the judicial process. Therefore, any transfer request must be based on substantial and credible evidence of bias or misconduct, not merely on the litigant's personal preferences or unfounded allegations.

9. I have meticulously reviewed the record and the impugned Order. I find no grounds for interference under the Revisional jurisdiction of this Court. In light of the above, this Revision Application is hereby **dismissed**.

JUDGE