

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Transfer App. No. S – 22 of 2024

Date of hearing	Order with signature of Judge
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Fresh case

1. For orders on CMA No.1491/2024 (Ex.)
2. For hearing of main case
3. For orders on CMA No.1492/2024 (Stay)

02.12.2024

Mr. Azhar Ahmed Khan, Advocate for applicant.

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Zulfiqar Ahmad Khan, J. – This Civil Transfer Application has been filed seeking the transfer of Family Execution No.12 of 2022, in Family Suit No.92 of 2021, from the Court of learned Family Judge, Khairpur to the Court of learned Family Judge, Sukkur.

2. Briefly, the aforementioned suit for maintenance was filed by the respondent (plaintiff) against the applicant (defendant) for herself and her daughter, which was partly decreed in favour of the respondent through judgment and decree dated 28.01.2022. The respondent then, for execution of that decree, filed the aforesaid Family Execution on 19.10.2022, which was admitted on the same day, and summons was issued against the applicant (judgment debtor). The learned executing Court, vide order dated 07.08.2024, allowed the Family Execution, observing that the record reveals that the judgment debtor / defendant has not complied with the directions / decree.

3. The sole ground taken by the applicant is that both parties are residents of Sukkur, and in this regard, he has relied upon an affidavit submitted by the respondent in G&W Application No.1 of 2022, wherein it is stated that the respondents are not residing within the jurisdiction of learned Family Judge, Khairpur, and are residing at Sukkur. Additionally, the applicant has expressed apprehension of harm from the respondent's relatives while appearing before the executing Court at Khairpur.

4. On the earlier date, i.e. 08.11.2024, learned Counsel for the applicant sought time to make research on the point of law that whether in execution proceedings, on the application made by the judgment debtor that he/she lives beyond the jurisdiction of the executing Court, execution proceedings may be transferred to the judgment debtor's place of residence. In compliance thereof, learned Counsel for the applicant has filed through his statement a case law reported as Mst. Kulsoom Rasheed v. Noman Islam (PLD 2021 Supreme Court 579). A perusal of that order shows that the applicant / decree holder filed that application for transfer in a suit which was decreed ex parte, praying that her husband / judgment debtor was a resident of Karachi, while she was a resident of Islamabad, and the decree could not be executed at Islamabad. Therefore, such application was disposed of by transferring the execution proceedings from one province to another.

5. It reflects that here the situation is different: the proceedings, including passing of the judgment / order in both the suit and the execution application, have been carried out in the presence of the applicant. The execution application has been decided. In the case relied upon by learned Counsel for the applicant, there is a considerable distance as both parties were residing in opposite directions of the country, but here there is a short distance of almost 30 kilometers between the two districts. Moreover, the applicant has been contesting the proceedings in the suit at Khairpur since 2021, until the executing Court's decision was rendered against him. The judgment debtor, instead of complying with the decree and the subsequent order passed in the execution application, both in his presence, has filed this transfer application, which shows his unwillingness to comply with the decisions of the Court.

6. In light of the above, the transfer of the execution proceedings from learned Family Judge, Khairpur to learned Family Judge, Sukkur, does not

appear to be warranted. The distance between the two districts is minimal, and the applicant has actively participated in the proceedings in Khairpur. The filing of the transfer application seems to be an attempt to delay the execution of the decree rather than a genuine concern about jurisdiction or safety. Therefore, this application for transfer along with listed applications is **dismissed in *limine***.

J U D G E

Abdul Basit