

IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA

Civil Rev. Application No. S-06 of 2025

Before:-
Mr. Justice Ali Haider 'Ada'.

Applicant : Mst. Gul Naz/Granaz w/o Ghulam Mustafa, D/o Muhammad Hassan through Mr. Ghulam Muhammad Barejo, Advocate.

Respondent No.1 : Ghulam Mustafa s/o Dur Muhammad Burdi, through Mr. Athar Ali Bhutto, Advocate.

Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 17.08.2026

Date of Order : 17.08.2026.

ORDER

Ali Haider 'Ada' J.- Through the instant Civil Revision Application, the applicant has assailed the order dated 03.12.2024 passed by the learned District Judge, Larkana, in Civil Transfer Application No.22 of 2024, filed by the Respondent, whereby Family Appeal No.44 of 2024 was transferred from the Court of the learned Additional District Judge-III, Larkana, to the Court of the learned Additional District Judge-II, Larkana, for its disposal. Feeling aggrieved and dissatisfied with the said transfer order, the applicant has invoked the revisional jurisdiction of this Court by filing the present Civil Revision Application.

2. The learned counsel for the applicant contended that the learned District Judge, Larkana, had exercised jurisdiction under Section 24 of the Code of Civil Procedure, 1908, to transfer Family Appeal No.44 of 2024 from the Court of the learned Additional District Judge-III, Larkana, without assigning any lawful or sustainable reasons warranting such transfer. It is argued that the impugned order is devoid of any judicial justification and, therefore,

suffers from material illegality and jurisdictional infirmity, rendering it liable to be set aside.

3. Conversely, the learned counsel for the respondent supported the impugned order and submitted that the respondent had lost confidence in the appellate Court before which the family appeal was pending and, therefore, the transfer application had rightly been allowed.

4. During the course of arguments, the learned counsel for the respondent was specifically called upon to satisfy this Court as to how an application under Section 24 of the Code of Civil Procedure, 1908, could be maintained for the transfer of a family appeal when the West Pakistan Family Courts Act, 1964, itself provides a specific mechanism through Section 25-A governing such matters. Upon being confronted with the said legal position, the learned counsel fairly conceded that the Act contains a special provision regulating the transfer of proceedings arising under the Family Courts Act.

5. The learned Assistant Advocate General submitted that the learned District Judge had exercised jurisdiction *coram non judice*, as the proceedings under Section 24, C.P.C. were themselves not maintainable in matters governed exclusively by the West Pakistan Family Courts Act, 1964.

6. It has also been noticed that the present Civil Revision is directed against an order which, *prima facie*, appears to have been passed without lawful jurisdiction. Nevertheless, this Court put the learned counsel for the applicant on notice to satisfy as to the maintainability of the present revision against such an order. The learned counsel, however, was unable to satisfactorily address the issue regarding the competence of the revision in the peculiar facts and circumstances of the case.

7. Heard the learned counsel for the parties as well as the learned Assistant Advocate General, and perused the available record.

8. At the outset, it is imperative to examine the relevant statutory provisions governing the controversy. Section 17 of the West Pakistan Family Courts Act, 1964, expressly excludes the application of the Code of Civil Procedure, 1908, to proceedings before the Family Courts except to the limited extent specifically provided therein. For ready reference, Section 17 of the Act reads as under:-

17. Provisions of Evidence Act and Code of Civil Procedure not to apply.- (1) Save as otherwise expressly provided by or under this Act, the provisions of the 1[Qanun-e- Shahadat, 1984 (P.O. No. 10 of 1984)], and the Code of Civil Procedure, 1908, 2[except sections 10 and 11,] shall not apply to proceedings before any Family Court 1[in respect of Part I of Schedule].

(2) Sections 8 to 11 of the Oaths Act, 1872, shall apply to all proceedings before the Family Courts.

9. The legal effect of Section 17 of the West Pakistan Family Courts Act, 1964, has been authoritatively explained by the Honourable Supreme Court of Pakistan in ***Dr. Asma Ali v. Masood Sajjad (PLD 2011 Supreme Court 221)***, wherein it was held that the provisions of the Code of Civil Procedure, 1908, stand excluded by virtue of Section 17 of the Family Courts Act and are, therefore, not *stricto sensu* applicable to proceedings before the Family Courts. The Honourable Supreme Court, however, observed that the principles underlying certain provisions of the Code may be invoked only in exceptional circumstances where the Family Courts Act is silent and such application does not defeat the object and scheme of the special statute. The relevant observations are reproduced hereunder:-

7. The provisions of the Civil Procedure Code have been excluded by section 17 of the Family Court Act, 1964, to proceedings under it. End it has been consistently held that such provisions are not stricto sensu applicable to the proceedings before the Family Court. However, as the Family Court Act is not an all encompassing legislation and the principles of certain provisions of the Code of

Civil Procedure have at times been invoked when necessary to give effect to the Family Court Act. For example, the only provision in the Act for execution of a decree is embodied in section 13, which only provides for the enforcement of money decree passed by the Court. No provision has been made for the execution of a decree for recovery of immovable property. For this purpose, the Courts executing such decrees passed by the Family Court have been adverting to the provisions of Civil Procedure Code. Likewise, apart from subsection (1) of section 13, providing that the Family Court shall pass a decree in such form as may be prescribed, no further provisions have been made regarding contents of decrees of different nature. For the present purpose, one may refer to Rule 19 of Order XXII of the Civil Procedure Code, mandating that a decree for recovery of immoveable property shall contain its description sufficient for its identification. This would only be possible if the property is sufficiently described in the plaint or in the evidence. The identification of the immoveable property is necessary for the execution of the decree by the Executing Court as it cannot go beyond the terms of the decree.

10. Furthermore, Section 25-A of the Family Courts Act, 1964 specifically empowers to transfer family cases. Once the legislature has provided a particular mode for exercising such power under a special enactment, recourse to the general provisions of the Code of Civil Procedure is not permitted. It is a settled principle of law that where the law requires an act to be performed in a particular manner, it must be done in that manner alone and in no other. Reliance in this regard may be placed upon the judgment of the Honourable Supreme Court in *Jehand v. The State* (2025 SCMR 923).

11. Prima facie, therefore, the impugned order is *coram non judice*, having been passed without lawful jurisdiction by invoking an inapplicable provision of law. Consequently, the present Civil Revision, which seeks to challenge such an order under the revisional jurisdiction of this Court, also suffers from a basic defect of maintainability, as the provisions of the Code of Civil Procedure relating to transfer do not govern proceedings under the Family Courts Act where a specific statutory mechanism already exists.

12. Nevertheless, merely because the revision petition is not maintainable does not preclude this Court from examining the true

nature of the proceedings. The Honourable Supreme Court in *Hafsa Habib Qureshi v. Amir Hamza* (PLD 2024 SC 781) has authoritatively held that the Superior Courts possess the power to convert proceeding into an appropriate one where the circumstances so warrant. Likewise, in *Muhammad Salman v. Naveed Anjum* (2021 SCMR 1675), it was held that the power to convert or treat one kind of proceeding as another emanates from the doctrine of *ex debito justitiae*, (as a matter of justice).

13. Keeping in view the above legal position, although the present Civil Revision is not maintainable, the same is treated and converted into a Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, in the interest of justice. The impugned order dated 03.12.2024, passed by the learned District Judge, Larkana, in Civil Transfer Application No.22 of 2024, is hereby set aside. The respondent shall, however, remain at liberty to seek transfer of the Family Appeal before the competent forum, strictly in accordance with the provisions of Section 25-A of the Family Courts Act, 1964. Consequently, the instant matter is disposed of.

JUDGE