

*ORDER SHEET*

IN THE HIGH COURT OF SINDH HYDERABAD  
CIRCUIT.

C.T.A. No.S—39 of 2013.

C.P. No. S—1357 of 2017.

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<b>DATE</b>	<b>ORDERS WITH SIGNATURE OF JUDGE</b>
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25.09.2017.

FOR KATCHA PESHI.

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Mr. Jagdish R. Mullani, Advocate for the applicant/petitioner.

Mr. Manzoor Hussain Subhopoto, Advocate for respondent.

Mr. Muhammad Ismail Bhutto, A.A.G.

These are two somehow identical matters. One involves the transfer of case Suit No.898 of 2013 from a Family Court Hyderabad to Family Court at Umerkot, and the other challenges the orders of the Family Court under Rule 5 & 6 of Family Court Rules, 1965. The parties are under litigation since last many years. In the instant proceedings the petitioner Shrimati Aashi challenges the jurisdiction of the trial court wherein the husband filed a suit for “judicial separation” under Hindu Family Laws in the court Civil & Family Judge Hyderabad disclosing the address of defendant Shrimati Aashi as of District Umerkot. The other suits filed are:

- (i) Suit for restitution of conjugal rights and maintenance filed by wife/petitioner bearing suit No.19 of 2014 at Umerkot.
- (ii) Suit / Application under Guardian & Ward Act No.19 of 2014 at Umerkot by husband.

Both the aforesaid suits (i) and (ii) were dismissed for non-prosecution at Umerkot. The other suit filed by husband is recovery of dowery articles at Matli wherein an application under section 5 & 6 of the Family Court Rules, 1965, was filed and the plaint was rejected. Petitioner

aggrieved of the fact that suit No.898 of 2013, filed by the husband Bishamlal in the court of Civil Judge & Family Judge IX Hyderabad, had no jurisdiction, filed an application under rule 5 & 6 of Rules 1965 while the transfer application on ground of convenience was dismissed which order is impugned by Shrimati Aashi in instant petition being C.P. No.S-1357 of 2013.

The trial court i.e. Civil Judge and Family Judge IX Hyderabad, is of the view that an application has been filed to buy time. He held that Rule 6 provides that a suit may be filed for the judicial separation or for dissolution of marriage where the cause of action wholly or in part arises.

I have heard the learned counsel and perused the material available on record.

Rule 6 of West Pakistan Family Court Rules 1965 reads as under:-

**“6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which:**

**(a) The cause of action wholly or in part has arise,  
or**

**(b) Where the parties reside or last resided together:**

**Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction.”**

Family Court Act, 1964 and the Rules framed there under i.e. West Pakistan Family Court Rules 1965 are applicable to all Family Courts including but not limited to those who professes different religions. The question before me is as to whether the trial court where a suit for judicial separation under Hindu Family Law was filed could exercise jurisdiction in view of the facts, pleadings and the relevant rules as referred above.

In para-13 of plaint, respondent / husband pleaded that he is residing within the jurisdiction of Police Station Bhitai Nagar Hyderabad, which is within the jurisdiction of Family Judge Hyderabad No.IX. It is not stated that the parties i.e. petitioner and respondent being husband and

wife last resided or ever resided at this address. In the written statement in response to para-13 of plaint, petitioner in para-8 of the written statement has denied the contents for want of knowledge. Petitioner/defendant submitted that the plaintiff/respondent last resided in village Rajo Khanani District Hyderabad from where she claimed to have been deserted by petitioner and as far as the territorial limits of trial court is concerned, the defendant/petitioner put the burden upon the petitioner. Subsequently an application under rule 5 & 6 of Family Court Rules 1965 was filed on the ground that subsequently a Guardian Application under section 10 & 25 was filed by the plaintiff and a suit for restitution of conjugal rights and maintenance was filed by petitioner/wife in the court of Civil Judge & Judicial Magistrate Umerkot. It is claimed in the application that the defendant / petitioner is a resident of Umerkot. Their two family matters as above are subjudice where wife ordinarily resides, therefore, this matter may also be transferred to the court where other two matters are pending.

Rule 6 determines the jurisdiction to try a suit within local limits of which (a) the cause of action wholly or in part arisen or (b) where the parties reside or last resided together.

Provided that in suits for dissolution of marriage or dower the court within the local limits of which the wife ordinarily resides shall also have jurisdiction.

This Proviso is primarily is in consideration of the fact that Muslim women who file their respective suits for dissolution of marriages and dower amount shall also be in a position to avail the jurisdiction of local limits where the (wife) ordinarily resides but that doesn't exclude the jurisdiction of the above two situations i.e. (a) and (b).

In the instant case the husband being a Hindu by caste/religion has filed a suit for judicial separation under Hindu laws and has attempted to exercise the first part of rule 6. The plaintiff/respondent never asserted this fact in plaint that they last resided at the address within local limits of Police Station Bhitai Nagar. Para-13 of plaint only says that the "plaintiff" is

residing within the jurisdiction of Police Station Bhitai Nagar. In a family suit for recovery of dowery articles filed by respondent / husband Bishamlal claimed that the cause of action accrued on 1.2.2012 when petitioner/wife left the house of plaintiff/husband taking the golden ornaments etc and secondly when defendant/petitioner refused to return the above gold ornaments and cash etc and the address of the plaintiff/husband is shown as Shwalo Mohalla Rajo Khanani, Talula Talhar District Badin, whereas the address of the petitioner/wife in the present suit for judicial separation is totally different as of Police Station Bhitai Nagar Hyderabad. When the husband himself has shown the last address when he was deserted by his wife as Sheewalo Mohalla Rajo Khanani, Taluka Talhar, District Badin then how a cause of action could accrue at Police Station Bhitai Nagar Hyderabad, for a suit for judicial separation. How cause of action wholly or in part could said to have arisen at Police Station Bhitai Nagar. How the parties could said to have last resided at the Police Station Bhitai Nagar, when it is not even pleaded. All these questions are not answered. The application is not merely filed to buy time. The application was filed on 6.3.2014 and in fact trial court disposed it off on 8.5.2017. It was a trial court which took about three years to dispose of the application. It cannot be said that the purpose of the application was to delay. The delay was caused by the trial court itself.

In view of the above facts and circumstances the petition is partly allowed to the extent that the impugned order is set-aside. However, the application is restored and to be considered in the light of the above facts and circumstances denovo.

In the light of the above order the transfer application has also become infructuous as the fate of the court shall be decided by the trial court after reconsidering the rules and the addresses shown in the pending cases and the address where they last resided together. However, for mere convenience of the parties a case cannot be transferred from one court to another at the and desire of parties

The trial court shall frame an issue and dispose it off preferably within one month and if so required evidence on the preliminary issue of jurisdiction may also be framed. However, it should not take more than six weeks to decide the question of jurisdiction in terms of rule 6 of Family Curt Rules 1965.

***Judge***

A.