

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Transfer Application No. S – 09 of 2021

Date

Order with Signature of Hon'ble Judge

For hearing of cases (Priority)

For hearing of main case

05-11-2021

Mr. Saeed Ahmed Bhatt Advocate for the Applicants

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ORDER

None present on behalf of the Respondents nor any intimation received, though notices issued.

This Civil Transfer Application has been filed on behalf of the Applicants, seeking transfer of Civil Appeal No.86 of 2017 (Misri & Others v Sultan Ahmed & Others), pending before the Court of Additional District Judge, Mirwah. It is the case of the Applicants that arguments were heard on 4.5.2019 and judgment was reserved; that again thereafter on 22.8.2019 arguments were heard and matter was kept for judgment but despite passing of several months the same was not announced; that thereafter, lastly the arguments were heard on 24-09-2020 and even written arguments were also directed to be filed, which was done and judgment was once again reserved but again the same was not announced; that such conduct on the part of the Presiding Officer is intentional and gives an impression that he is inclined to favor the opposing party; that it also against the law settled by the superior Courts; hence, this transfer application be allowed.

2. Notice was ordered, but none has turned up for respondents. This transfer application was filed on 16.4.2021 and on 4.5.2021 report was called from the Appellate Court and at the same time it was restrained from passing any judgment in the Appeal. No immediate reply was filed by the Appellate Court and then on 10.8.2021 following report was filed by the Appellate Court;

I have the honour to submit my comments in above subject noted Civil transfer application as under: -

1/- That the above civil appeal No.86/2017 received by this Court on 21.9.2017 on administrative ground for disposal according to law. The respondents served through publication and the matter was being adjourned from time to time on adjournment

applications of the parties.

2/ That in above Civil Transfer Application, the allegations against the undersigned are false, fabricated hence denied. Applicant has not specified any particular date time or incident; hence it appears flimsy and concocted, which is denied specifically and categorically. The first transfer application of the applicant has been dismissed by the Honourable District and Sessions Judge, Khairpur. The undersigned has no objection if this matter is transferred to any competent Court of law. Present transfer application is filed just to create ground for transfer of civil *appeal* otherwise, nothing else.

3. Thereafter, the Appellate Court has filed another report dated 01.9.2021 which reads as under;

I have the honour to submit my comments in above subject noted Civil transfer ation as under:-

That the above civil appeal No.86/2017 received by this Court on 21.9.2017 on illustrative ground for disposal according to law. The respondents served through publication the matter was being adjourned from time to time on adjournment applications of the parties.

That till 6.8.2020 work was suspended for COVID-19 under the directions of honorable High Court of Sindh.

That on 6.8.2020 detailed order was passed and parties were directed to argue (copy annexed herewith as annexure "A").

That on 27.8.2020 undersigned was due to personal reasons was on casual leave. That on 10.09.2020 directions were given to the parties for written arguments, as they were not cooperating for arguments.

That on 24.9.2020 written arguments filed in late hours and on same day undersigned decided almost more than four cases. Copy of list disposal cases is annexed herewith for kind perusal as annexure "B", thereafter, matter was adjourned to 14.10.2020 for judgment but due to rash of work, as on same day undersigned has decided about four other cases including judgment in special case Narcotics Substance Act. List of cases is annexed as annexure "C" for kind perusal, matter adjourned to 2.11.2020.

That on 2.11.2020 the matter was fixed for re-arguments due to lapse of more than one month and on same day undersigned has decided about nine cases including petitions and other proceedings succession petition etc. List of cases is annexed as annexure "D" for kind perusal.

That on 1.2.2021 matter was adjourned due to strike of Bar on 25.2.2021 and on 25.2.2021 matter again adjourned due to strike of Bar and matter adjourned to 25.3.2021.

That on 25.3.2021 respondents informed to undersigned that he had filed transfer application before Honourable District & Sessions Judge and matter was being adjourned for result of transfer application.

That transfer application of the respondents was dismissed and then they filed transfer application before Honourable High Court and the matter is being adjourned for result of transfer application pending before Honourable High Court.

That undersigned has no personal interest in the matter, whatever happened or

delay is made that is human error or due to rush of work and delay is on part of parties. In fact undersigned used to decide the matters after hearing the parties within reasonable time and on priority basis, this could be seen from progress of undersigned since induction in this noble profession

4. Being dissatisfied with the report of the Appellate Court, on 23.8.2021 another report was called from the concerned District Judge who has filed the following report on 12.10.2021.

In compliance to the order dated 04.10.2021 passed by the Honourable High Court of Sindh Bench at Sukkur in subject transfer application, I have the honour to submit my report as under:-

- 1) That Sir, initially transfer application bearing No. 16/2021 was filed by the applicants through their attorney Abdul Majeed before this court and same was dismissed with directions to the appellate court to decide the civil appeal No.86/2017 within one month under intimation to this court but the trial Judge has not submitted such report to this court so far.
- 2) That Sir, on 24.09.2020 the arguments were heard, but the judgment has not been announced by the learned appellate court and on quaries the learned trial Judge stated that he was under impression that the judgment cannot be passed after lapse of 30 days of hearing of arguments, as such, matter was fixed for re-arguments. However, he was advised to go through the judgment passed by the Honourable Apex Court in the case reported as MFMY Industries Ltd. V. Federation of Pakistan (2015 SCMR 1550).
- 3) ***That Sir, at present there are number of complaints against the trial Judge regarding his arrogant behavior, harsh attitude and corruption. The ground taken by the applicants for transfer of their appeal from the court of Additional Sessions Judge, Mirwah appears to be reasonable.***

5. Perusal of the aforesaid facts and the reports filed by the Appellate Court as well as the learned District Judge, Khairpur, reflects that initially the transfer application filed before the District Judge, Khairpur, was disposed of on 6.4.2021, with directions to the Appellate Court to decide the same within one-month time; however, the said directions were never complied with, compelling the Applicants to file this Civil Transfer Application. In his report dated 12-10-2021, the District Judge, Khairpur has stated that various complaints are pending against the learned Judge as to his arrogant behavior, harsh conduct and so also the allegation of corruption and in that case the District Judge has also supported the case

of the Applicants for transfer of this Civil Appeal. Insofar as the report of the Appellate Court is concerned, it appears that initially an evasive and irrelevant report was filed before this Court wherein no detailed progress of the case was mentioned. Neither the case diaries were sent; nor any other details of the case were given. In fact, the Appellate Court had filed an identical report before the District Judge, Khairpur, in the first transfer Application. There is no difference in both the reports. It was only after this Court was dissatisfied, and called for a report from the District Judge, that the Appellate Court filed another report making an attempt to justify its conduct in respect of the delay caused in this case. However, the entire reply is evasive, not borne out from the record and is an attempt to mislead this Court. Further effort has been made to take shelter in some covid restrictions imposed by the Courts. It may be noted that this matter has got nothing to do with the Covid related restrictions. The Appeal is pending since 2017, whereas, for the first time it was argued and reserved for judgment on 4.5.2019. It was again put to rehearing and was once again argued and reserved for judgment on 22.8.2019. This all pertains to the period much prior to Covid restrictions, which in fact remained in field only from March 2020 to May 2020. It is notwithstanding the fact that Courts were never fully closed and were still working, at least for urgent cases. Therefore, the argument that till 6.8.2020, the work was suspended has nothing to do with the facts of this case as it all started either before Covid restrictions; or after 24.9.2020. The conduct of the Appellate Court in dealing with this Appeal speaks volume and cannot be appreciated in any manner; rather needs to be deprecated as it has not only shown gross negligence and incompetence in timely disposal of the case; but is also an act of defiance on the part of the Appellate Court, as the learned District Judge, had given directions on 6.4.2021 to decide the Appeal within 30 days. If all the excuses and reasoning so assigned by the Appellate Court in its two reports are accepted as correct, even then, there is no explanation as to why finally after directions of the District Judge in his order dated 6.4.2021, the matter was not decided. This is notwithstanding that the both parties were directed to file written arguments, which were complied with; hence, there was no impediment of whatsoever nature in deciding the Appeal within time. Not only this, the first report of the Appellate Court very clearly depicts the conduct of the Court and shows that the Judge is not bothered with that is going on in his Court, and what directions are being issued to him, and what compliance is required to be

made. Even in the second report he has conveniently avoided to explain as to why the order of District Judge dated 6.4.2021 was not complied with.

6. The Hon'ble Supreme Court in the case of ***MFMY Industries Ltd. and others vs. Federation of Pakistan (2015 SCMR 1550)***, had the occasion to deal with this delay on the part of Courts (including sub-ordinate Courts as well as Superior Courts) in delivering judgments after conclusion of the cases including arguments. The Hon'ble Supreme Court has given certain directions specially to trial and Appellate Courts (Courts of Additional and District & Sessions Judges), that failure in adhering to these directions may entail departmental proceedings including observations in their Annual Confidential Reports. It has been observed as under;

In my view, the expression "not exceeding thirty days" makes it mandatory for the trial Court to render its judgment within the prescribed time period. ***If the same is not done, without a sufficient cause i.e. a cause beyond the control of the Judge, the judgment is impaired in value if not invalid and disciplinary action can be taken against a Judge who is found habitual in delaying his judgments beyond that period, obviously following proper legal steps for such action and in any case at least this vice of the judge must adversely reflect in his ACRs.***

7. As to the guidelines for the Appellate Courts dealing with judgments and decrees of the trial Courts in Civil matters it has been directed as under;

From a reading of the above, it is conspicuous that the appellate Court after hearing (note: obviously the hearing means oral arguments) the parties or their pleaders, as the case may be, shall pronounce the judgment at once or on some future day. This future day by no stretch of legal interpretation or on the settled rules and norms of justice can be construed to mean an indefinite period. Rather the rule of reasonableness of time required for the performance of a judicial act in the normal and ordinary course necessary for doing justice should be attracted and pressed into service and read into it.

If the first appeal against the decree or order (subject to the pecuniary jurisdiction) is being heard by the District Judge (Additional District Judges included), and it is only the oral submissions which are being addressed by the parties/pleaders and heard by the court and no fresh evidence is being recorded (subject to additional evidence as discussed in Order XLI, Rule 27, C.P.C.), as the long exercise of a trial is now over; the record is complete; the matter is ripe in all respects for a decision, and the ***Judge is only required to render the judgment after hearing the summations, thus he has to do the same within reasonable time. This reasonable time, to my candid consideration, should not be more than 45 days. I am enlarging the margin of 15 days (i.e. 30 days + 15 days) because the same Judges also act as Sessions Judges and have to conduct session trials and render decisions in criminal matters and other judicial work also, thus given them the margin of other assignments the noted time is most reasonable and quite sufficient for the appellate court (District Judges) to compose the judgment.*** This rule and adherence to

time, should equally apply to the judgments in relation to the revisional as also review jurisdiction of these court(s) or where the court(s) is exercising any other special jurisdiction in cases of civil nature before it. If the judgments are not announced within such reasonable time as stated above, same consequences should follow which are prescribed for the trial court Judges in respect of action(s) proposed against them and the impairment of the judgment(s). I find it expedient to mention here that this rule should also extend to all the special courts (forums), tribunals either constituted under the Federal or the Provincial laws and set up which are presided over by the serving or retired judges of the subordinate judiciary and even to those forums which are presided over by the ex-judges of the High Courts (note: however if some time has been fixed by the law for the disposal of any matter before the 'special forum, such law should take precedence over this rule of reasonableness of time set out in this opinion). It also requires mention here that in quite a large number of cases it has been experienced that the cases are adjourned for the arguments for umpteen, indefinitely numerous occasions, therefore to curb this menace the Judges of the District Judiciary and the special forum throughout the country while pronouncing their judgments should record a note at the end/bottom thereof, as to how many times the case was listed for hearing of the arguments and was adjourned so that the High Courts which have supervisory authority over the said Judiciary must stay abreast about the performance of the Judges; the causes for the delay and should take measures and the steps to rectify the causes and the reasons in this behalf. Moreover, this Court as the apex Court of the country and being the paterfamilias must also know what is the state of affair in the Judiciary at the lower ebb and the manner in which the cases are being dealt with and conducted at the trial and appellate/revisional stage. The special courts and the forums should also make such endorsements at their judgments too. No lethargy or casual attitude is tolerable and the times have come to take appropriate stern and positive actions for speedy justice, rather simple rhetorics.

8. The above observations of the Hon'ble Supreme Court are in fact a direction to all Sub-Ordinate Courts and do not leave any further room for any exception. The Appellate Court in this matter has miserably failed to follow these directions, whereas, no justifiable reasoning of whatsoever nature has been put forth for not following these directions. In fact, here it a case of one step further. The District Judge while deciding the transfer application had given a further period of 30 days (which in fact he ought not to have given and instead should have transferred the case) to the Appellate Court, which period was also beyond the mandate of the District Judge in view of the judgment of the Hon'ble Supreme Court as above. But as noted, the Appellate Court even then failed to adhere to such directions and did not decide the matter within such extended period. The is a case of continuous defiance, on the part of the Appellate Court and must be taken note of, warranting action against the Appellate Court; however, this Court cannot do so in view of the pronouncement of the Hon'ble Supreme Court in the case of Miss Nusrat Yasmin v Registrar Peshawar High Court (PLD 2019 SC 719) and can only send a memorandum to the Hon'ble Chief Justice for appropriate action which is being done separately.

9. In view of such position, this Civil Transfer Application merits consideration and is accordingly allowed. The Civil Appeal No.86 of 2017

stands transferred from the Court of Additional District Judge, Mirwah to any other Court of Additional District & Sessions, Judge, at Khairpur, having jurisdiction to be nominated / assigned by the concerned District Judge, Khairpur. Once the case stands assigned to a new Court, the said Court shall positively decide the Appeal in question within a maximum period of 30 days from such date and shall file compliance report before this Court through the Additional Registrar of this Court, who is further directed to place the same in Chambers for perusal.

Judge

ARBROHI