

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

C.T.A. No. 05 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on CMA 179/2021.
3. For hearing of main case.

08.03.2021.

Mr. Ghulamullah Memon, Advocate for applicants.

ARSHAD HUSSAIN KHAN, J: Through instant Civil Transfer Application, the applicants seek transfer of F.C. Suit [new] No.16/2015 F.C.Suit [Old] No.34/2013 [Re-Niaz Hussain and others v. Province of Sindh and others] from the court of Senior Civil Judge, Johi to any other competent court within the jurisdiction of District Dadu, Sindh. The applicants earlier also filed transfer application before the learned District Judge, Dadu, which was dismissed, vide order dated 06.01.2021.

2. It is *inter alia* contended by learned counsel for the applicants / plaintiffs that the conduct / attitude of learned Presiding Officer of the trial court is unfair and partial; that the learned trial judge is taking personal interest in the case in favour of the respondents / defendants; that he is allowing the respondents to visit his chamber; that despite directions issued to the learned trial court by the learned District Judge, Dadu, it did not decide the matter within 03 months; that learned Presiding Officer passed certain intimidating remarks against the present advocate of the applicants; that learned Presiding Officer is biased in the case; that due to above partial act of the learned Presiding Officer of the trial court, the applicants apprehend prejudicial disposal of the suit by the said court; their confidence have been shattered upon the court and as such applicants could not expect justice, hence have prayed for transfer of the above case.

3. Heard learned counsel for the applicants and perused the record as well as report furnished by learned presiding officer of the trial court.

4. From perusal of the report furnished by learned presiding officer of the trial court it appears that about 50 persons are under litigation in the suit, which is pending since 2013 and the present proceedings before the trial court is a second round of litigation. The matter between the parties is at final stage.

5. In the present matter, transfer of the case has been sought mainly on the ground of bias of the learned Presiding Officer, seized with the trial of the subject case. On this point, the Hon'ble Supreme Court of Pakistan in case Pakistan Newspaper Society and others v. Federation of Pakistan [PLD 2012 SC 1], inter alia, has held as under:-

"bias is said to be of three different kinds:-

(a) A Judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation, so as to constitute a legal interest.

A 'legal interest' means that the Judge is 'in such a position that a bias must be assumed' .

(b) Pecuniary interest in the cause, however, slight, 'will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest. For this reason, where a person having such interest sits as one of the Judges the decision is vitiated.

(c) A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events happening either before or during the trial. Whenever there is any allegation of personal bias, the question which should 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', but 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. The present case on the above touchstone, does not fall in any of the above categories of bias. Cases could not be transferred as a matter of routine or at the whims of the parties. Administration of justice requires that litigants should have confidence in the judicial system. Although application could be filed for transfer of a case when a party has sufficient reasons, grounds and evidence in

his/her possession regarding pecuniary interest, bias of judicial officer. Certainly, these elements are not available in the case in hand. Eventually, it has to be seen whether mere an apprehension for not getting justice at the hands of the court could be a ground for transfer of the case. For this purpose, one has to prove bias of a judge through a trustworthy evidence. The allegations levelled in the petition when examined, it reveals that no substantial evidence has been attached with the application for transfer of the case. Most of the allegations are of vague and evasive nature having no substance.

7. In view of the above discussion, instant transfer application lacks merit and is accordingly dismissed.

JUDGE

Tufail