

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Civil Transfer Application No.S-17 of 2021

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For orders on CMA-1370/2021
2. For hearing of main case.

06.09.2021

Mr. Akhtar Ali Abro, Advocate for applicant.  
Mr. Shabeer Hussain Memon, Advocate for respondent  
Mr. Muhammad Ismail Bhutto, Additional A.G.

**ORDER**

**NAIMATULLAH PHULPOTO, J:-** Through this transfer application moved under Section 25-A of West Pakistan Family Courts Act, 1964, applicant Waseem Akram seeks transfer of Family Suit No.16 of 2021 pending before learned Family Judge-I, Sehwan filed by Mst. Asma against the applicant to some other Family Court at Kotri. Notices were issued against the respondent. Mr. Shabeer Hussain Memon, Advocate has filed his power on behalf of the respondent Mst. Asma, which is taken on record. Previously, applicant / defendant applied for transfer of Family Suit No.16 of 2021 before learned District Judge, Jamshoro, same was dismissed vide order dated 27.05.2021.

2. Learned Advocate for applicant / defendant Waseem Akram has mainly contended that applicant is the resident of Taluka Kotri District Jamshoro; it is inconvenient for him to appear before learned Family Judge-I, Sehwan. It is further submitted that learned Family Judge has closed side of applicant Waseem Akram and applicant does not want to proceed with the matter before learned Family Judge-I, Sehwan. Lastly submitted that conduct of Family Judge is not fair.

3. Mr. Shabeer Hussain Memon, Advocate appearing for respondent Mst. Asma submits that Mst. Asma is the resident of village Paban near Bhan Saeedabad, which is near to Sehwan. It is further submitted that convenience of the respondent / plaintiff Mst. Asma is necessary to be seen particularly in the family matters. Lastly submitted that adverse order passed by court is no ground to transfer the case.

4. Learned District Judge had dismissed the transfer application No.10 of 2021 mainly for the following reasons:-

“7. The opponent lady admitted that prior to her marriage she was residing with her father and other family members at Subhanallah Colony Taluka Kotri and when she was ousted by applicant, she started residing with her uncle at Bhan Saeedabad Taluka Sehwan due to apprehension of danger to her life at the hands of applicant. Even otherwise, ordinarily residence must not require proof as would be for permanent residence, such is keeping in view the agony of woman who on being ousted by husband sometimes to do not find shelter in the house of her parents, as held in 2019 MLD 720 (Karachi).

8. So far issuance of threats of dire consequences to the applicant by the uncle of opponent lady is concerned; the applicant has not produced any record, which shows that he has filed an application against such threats before any Court or any other legal forum. As per the report of learned trial Judge, summons have been issued against applicant, but he has not yet appeared, despite having knowledge regarding pendency of family suit. In this regard, contention of learned advocate for opponent lady requires consideration that applicant has been made ex-parte in family suit, therefore, he has filed instant transfer application only to linger on the case”.

5. I have carefully heard learned Counsel for the parties and perused the relevant record. It appears that Mst. Asma has filed Family Suit

No.16 of 2021 before learned Family Judge-I, Sehwan for maintenance. Learned Counsel for the applicant submitted that the suit was fixed for filing of the written statement but Family Court has closed side and he has submitted an application for re-opening of side. It is matter of the record that Mst. Asma resides in village Paban near Bhan Saeedabad, which is situated near Sehwan Town and applicant Waseem Akram resides at Kotri. Convenience of Mst. Asma being lady is to be preferred in this matter. Suit for maintenance cannot be transferred at the choice of Waseem Akram. Moreover, the accusations / allegations leveled against learned Presiding Officer on the basis of adverse orders are baseless because legal remedy is there. Trend of moving transfer applications with false and frivolous grounds particularly attacking the reputation and integrity of the Judges is getting alarming situation. Frequent and unjust transfer applications shake the confidence not of the Judicial Officer, but also others working under same umbrella. This is the high time that the Judges of the District judiciary, who are devoted, dedicated and committed towards their official obligations in dispensation of justice must be provided protection. Honourable Supreme Court of Pakistan in the case of *AKHTAR ALI v. The STATE (2020 SCMR 1243)* was pleased to observe as under:-

“2. In the move before the Courts below, we have found his accusations, directed against learned Judge as outrageous as well as scandalous. It is fundamentally important for the peaceful preservation of any society that its Judges attend call of their office fearlessly with dignity, respect and independence so as to sit on the judgment between the contestants, regardless of their status or station, without let or hindrance. A society cannot countenance obstruction or interference with the administration of justice without incurring disastrous consequences, therefore, to ensure freedom to Judge within the remits of law is a duty cast upon all and sundry without exception and immunity”

6. Further, in the matters of matrimonial proceedings, it is the convenience of the wife, which is to be considered and given preference over that of the husband, as has been observed by Honourable Apex Court in various judgments.

7. For the above stated reasons, the instant transfer application is without merit and the same is dismissed. However, learned Family Judge, Sehwan is directed to decide the subject family suit within 02(two) months under intimation to this Court.

JUDGE

Shahid