

Order Sheet
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Civil Transfer A. No.S- 01 of 2022

Date of hearing	Order with signature of Judge.
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Hearing of Case(Priority)

1. For hearing of main case
2. For hearing of CMA 72/2022

23-05-2022

Mr. Sajjad Hussain Kolachi, Advocate for the Applicant.
Mst. Laila Khatoon (Respondent) present in person.

Through this Civil Transfer Application, the Applicant seeks transfer of Family Suit No.35 of 2018 from the Court of Civil & Family Judge-II, Mirwah to any other Court, as may be directed.

Counsel for the Applicant submits that in the first round of litigation, Family Suit filed by the Respondent was decreed vide Judgment dated 22.05.2021 and in Family Appeal No.31 of 2021, the Additional District Judge, Mirwah vide Judgment dated 23.06.2021 had set aside the same and remanded the case to the Trial Court by directing to settle two additional issues; record further evidence and thereafter pass a judgment. He submits that the Trial Court has ignored the directions of the Appellate Court and even an application filed by the Applicant for framing two additional issues has been dismissed vide order dated 07.01.2022; hence, this Transfer Application.

Respondent is present in person and on the last date of hearing had filed objections with the statement that she would not be able to engage a Counsel.

I have heard Applicant's Counsel and perused the objections of the Respondent.

It appears that the trial court had earlier decreed the Suit of the Respondent vide judgment dated 22.05.2021, which was impugned by way of Civil Appeal No.31 of 2021 by the present Applicant. The Appeal was allowed and the operative part of the Judgment of the Appellate Court dated 16.06.2021 reads as under:-

“By the reasons recorded above the judgment and decree passed in original suit No.35/2018 dated 22-06-2021. Resulting to that the appeal in hand is remanded back to original court to decide following issues.

- i. Whether petitioner can seek maintenance for herself from her father-in-law after demise of her husband?
- ii. Whether the grandfather can be compelled to maintain her grand children after demise of their father when he has not applied for their guardianship or custody?

Original court is further authorized to call further evidence from both parties or if deems that insufficient evidence is available (subject to consent of the parties) shall hearing to the parties and then decide the matter a fresh, after giving finding on both the issues settled by honourable High court in C.P.No.S-846/2018. Accordingly appeal in hand stand allowed with no order as to cost. A decree shall follow and be sent to the original court for compliance”.

It appears that learned Judge of the Trial Court instead of following the directions as above dismissed the application of the Applicant which apparently was not required and on perusal of order dated 07.01.2022, whereby, the application of the Applicant for such purposes has been dismissed, it appears that learned trial Judge has made an attempt to interpret the order passed by this Court in C.P.No.S-846 of 2018 and has observed that there were no such directions by this Bench to frame additional issues or record further evidence. I am afraid learned Judge has misdirected himself by making such observations, as notwithstanding that whether there were any directions of this Bench or not in the said order, the Appellate Court's Judgment is in clear terms and contained directions to the Trial Court

to settle two additional issues and record further evidence, if required. In that case, the learned Trial Court ought not to have gone into the fact that whether this Court in the above petition had given any direction(s) or not. The Judgment of the Appellate Court is binding on the Trial Court and therefore it appears that learned Trial Judge, who has already passed a judgment and decree in favour of the Respondent, is not inclined to alter or change his mind after passing of the Appellate judgment.

In view of such position, this Civil Transfer Application is **allowed** and the Family Suit No.35 of 2018 (*Mst. Lailan Khatoon v. Moula Bux*) stands transferred from the Court of Civil & Family Judge-II, Mirwah to the Court of Civil Judge-I, Mirwah for finally deciding the same on merits and in accordance with law, including the directions of the Appellee Court as noted above.

Let copy of this order be communicated to the concerned Courts for compliance.

JUDGE

Ahmad