

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

Civil Transfer Application No.S — 22 of 2021.

DATE

ORDER WITH SIGNATURE OF JUDGE

06.09.2021.

FOR HEARING OF MAIN CASE.

Mr. Rao Faisal Ali Advocate for applicant.
Mr. Parshotum Khatri Advocate for respondent No.1
Mr. Muhammad Ismail Memon Additional A.G. Sindh.

NAIMATULLAH PHULPOTO, J.-

Through this transfer application

under section 25-A of West Pakistan Family Courts Act 1964, applicant/defendant Nadeem seeks transfer of Family Suit No.95 of 2020, filed by Mst. Reema against her husband Nadeem pending before learned Consumer Protection Court & Family Judge, Mirpurkhas, to some other Court at Mirpurkhas

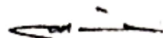
2. Notice of this application was issued to the respondent No.1 Mst. Reema and comments were called from learned Presiding Officer of Family Court.

3. It appears that Mst. Reema/respondent No.1 filed Family Suit No.95 of 2020 against her husband Nadeem for Dissolution of the marriage by way of Khulla, recovery of dowry articles and medical expenses. Learned Family Judge vide its judgment dated 3.3.2021 decreed the suit in the following terms:-

(i) *Marriage between Mst. Reema daughter of Muhammad Akram and Nadeem son of Qamar Ahmed is dissolved by way of Khula in lieu of remaining dower amount.*

(ii) *Apparently Khula has been granted and during Iddat period she thus would be wife of defendant and she will undertake such iddat for her husband hence entitle to maintenance during iddat period only hence the defendant is directed to Pay PKR.3000/- towards iddat period for 3 months total amounting PKR:9000/- in lump sum in-towards iddat.*

(iii) *Defendant Nadeem Ahmed is directed to return dowry articles as per list of plaintiff side or in lieu of payment of PKR:3,50,000/-*



(iv) Defendant is further directed to pay PKR:25000/- to the plaintiff side as charges of medical expenses.

Office was directed to prepare the decree in the above terms.

4. The judgment and decree passed by learned Family Judge were challenged before IIInd Additional District Judge/MCAC Mirpurkhas in Family Appeal No.20/2021. Learned Additional District Judge vide her Judgment dated 08.07.2021 set-aside the impugned judgment and decree, to the extent of dowry articles and medical expenses and matter was remanded to the Family Court for affording an opportunity to both the sides for adducing better evidence on the issues of the dowry articles and medical expenses. Presently, Family Suit is pending before learned Family Judge Mirpurkhas.

5. Mr. Rao Faisal Ali learned Advocate for the applicant/defendant mainly contended that learned Family Judge has refused to provide an opportunity to the applicant/defendant for producing the evidence on the issues of the dowry articles and medical expenses. It is further submitted that attitude of learned Presiding Officer is highly questionable. Lastly, it is submitted that applicant/defendant Nadeem has lost confidence and Family Suit filed by Mst. Reema may be transferred to some other Court in District Mirpurkhas.

6. Mr. Parshotum Khatri learned Advocate for respondent / plaintiff Mst. Reema argued that learned Family Judge never refused to receive the additional evidence in terms of the remand order. He has further stated that inconvenience would be caused to Mst. Reema if Family Suit is transferred from Mirpurkhas to some other place.

7. After hearing the learned counsel for the parties I have perused the comments filed by learned Family Judge Mirpurkhas, in which allegations have been denied. It is further submitted that Mr. Rao Faisal Ali Advocate for defendant Nadeem has submitted four adjournment applications after the remand of the case and is not interested to proceed with the suit.

8. Applicant / defendant Nadeem couldn't produce any material to satisfy this Court that after remand of the case, trial Court had refused to allow

applicant/defendant Nadeem to produce the additional evidence on the issue of dowry articles and medical expenses. Mere allegation against Presiding Officer without any substance is no ground to transfer the case particularly Family Suit from the territorial jurisdiction of the Family Court.

9. 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.

10. 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"

11. For the above stated reasons, instant transfer application is without merit and same is dismissed.

Sd/- NAIMATULLAH PHULPOTO,
JUDGE.