ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
CTA No. 24 of 2024

Date	Order with signature of Judge

1.For order on CMA No.3610/2024
2.For order on CMA No.3611/2024
3.For hearing of main case

03.04.2024

Mr. Khurram, Advocate for the petitioner.

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1. Urgency granted.

2. Exemption granted subject to all just exceptions.

3. This transfer application has been filed seeking transfer of G&W No. 366 of 2023 from the Court of learned Family Judge-IX Karachi Central to learned Family Judge-I Central Karachi. Learned counsel contends that respondent has filed G&W case No.366/2023 against the petitioner before Family Court-IX and not appearing before the Family Judge-I where Family Execution No.23/2019 is pending against the respondent. The allegation is that the attitude of the Presiding Officer with the applicant is not good. There appears to be no other grounds pleaded in the memorandum of application in support of the applicant's prayer. There is also no corroboration of any sort whatsoever, available on the file, to support the pleadings of the applicant.

It is borne from the record that the primary allegation of the petitioner, that the respondent is claiming unlawful proximity with the learned Presiding Officer, is predicated upon the alleged and

uncorroborated statement of the said respondent. The applicant has failed to plead how came to know about the same. The second allegation, pertaining to the alleged contrary attitude of the learned Presiding Officer, is merely a general statement and no particulars (or corroboration) have been pleaded in respect thereof. It is well settled law that the transfer of a matter from one Court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interests of justice. The august Supreme Court has delved into the issue of transfer of adjudication for and in such regard it was held in the case of Government of N.W.F.P Though Chief Secretary And Another v. Dr. Hussain Ahmed Haroon & others (2003 SCMR 104), as follows:

> *"…It is an age-old fundamental principles of law that justice should not only be done but manifestly and undoubtedly it should seen to have been done. To achieve this objective/goal it is of prime importance that a Judge/person equipped with the authority of decision should not be having any sort of personal interest in the outcome of the matter under issue before him. The conduct of the proceedings should not generate any reasonable apprehension in the mind of a person that the deciding officer has harboured any grudge or bias agaisnt him. This principle that no person should be a judge in his own cause (memo debet esse in propria sua causa) was discussed threadbare in Dimes v. Grant Junction Canal Co. (1852) 3 H.L. Cas. 759). The learned Judges of this Court in a case reorrted as Federation of Pakistan v. Muhammad Akram Shaikh (1990 PSC 388) has highlighted the above principle after discussing the ratio of the aforesaid case. They have incorporated the dicta underlying this principle which are as under:-*
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> > *"There is no doubt that any direct pecuniary interest, however, small in the subject of inquiry does disqualify a person from acting as a Judge in the matter." Blackburn, J. in R.v Rand (1986) LR 1 WB 230, 232.*
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> > *"If he has any legal interest in the decision of the question one way he is disqualified no mater how small the interest may be" Lush, J. in Serjeant v. Dale (1877) 2 QBD 558, 567.*
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> > *"….the least pecuniary interst in the subject-matter of the litigation will disqualify any person from acting as a Judge." Stephen, J. in R v. Farrant (1887) 20 ABD 58, 60.*
> >
> > *"….a person who has a judicial duty to perform disqualifies himself from performing it if he has a*

pecuniary interest in the decision which he is about to give or a bias which renders him otherwise than an impartial Judge. If he has a pecuniary interest in the success of the accusation he must not be a Judge." Bown, L.J. in Lesson v. General of Medical Education. (1889) 43 Ch. D 366, 384,"

It is to be judged whether a reasonable person in the similar situation would assume the possibility of bias in the mind of the deciding officer. It is always a question of fact to be decided independently in each case. In the present case the doctors community though their Association was agitating from the very beginning agaisnt the posting of a non-technical person as Secretary Health. This issue was going on for a considerable period. They were having some demands as according to their assumption their career was at stake. In these circumstances it could not be said that their apprehension for the change of Authorized Officer was not reasonable when they all were voicing for the change. They were certainly having apprehension and foundation. In this regard it would be apt to reproduce the determination of the learned Judges reported in Manak Lal, Advocate v. Dr. Prem Chan Singhvi and others (PLD 1957 SC (India) 346) which is in the following terms:-

"It is well-settled that every member of judicial proceedings must be able to act judicially; and it is that Judges should be able to act impartially, objectively and without any bias. In such case the test is not whether in fact bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As C. v. Bath Justices (1926 App. Cases 586 at page 590):

"This rule has been asserted, not only in the case of Courts of Justice and other Judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others".

In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however, small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. The principle, says Halsbury, nemo debt esse judex in causa propria sua precludes a justice who is interested in the subject-matter of a dispute, from acting as a justice therein."(Halsbury"s Laws of England; Vol.XXI, p.535, para. 952). In our opinion, there is and can be no doubt the validity of this principle and we are prepared to assume that this principle applies not only to the

justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."
*(**Underlining is mine**)."*

It is patently evident from the foregoing that the allegation of proximate contact, between the learned Presiding Officer and the stated respondent, is prima facie hearsay and that such an allegation can in no manner be construed to attribute the vice of bias to the learned Judge. The secondary allegation of improper conduct, vis a vis the applicant herein, appears also to be devoid of any merit as the same is neither pleaded with proper particulars nor supported by any corroboration available on the file. It is also the considered view of this Court that an unmeritted transfer of a case from one court to another would tantamount to an expression of no confidence in the said learned Judge.

In view of the foregoing, this civil transfer application, along with listed applications, is dismissed as there are no cogent grounds available in the pleadings or on the record justifying the grant thereof.

JUDGE

Aadil Arab