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**JUDGMENT SHEET**  
**LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**Civil Revision No.74007 of 2023**

Madriasa-Tul-Madina      Versus      Lahore Development Authority, etc.

**J U D G M E N T**

<b>Date of Hearing</b>	08.12.2023
<b>Petitioner by:</b>	Mr. Ijaz Ahmad Khan, Advocate.
<b>Respondent No.1 by:</b>	Barrister Abdullah N. Malik, Advocate.
<b>Respondent No.2 by:</b>	Mr. Hafeez-ur-Rehman Chaudhry and Mr. Labeeb Zafar Bajwa, Advocates.

**Anwaar Hussain J.** Challenge has been laid to order dated 03.10.2023, passed by the learned District Judge, Lahore who has proceeded to accept the application of respondent No.2 (“**the respondent**”), under Section 24 of the Code of Civil Procedure, 1908 (“**CPC**”), and has withdrawn the appeal preferred by the petitioner and revision filed by respondent No.1, pending before two separate Courts and fixed both the cases before himself, on the ground that the respondent has shown reservations regarding the Presiding Officer(s) concerned even though no such reservation is reflected in the application filed by the respondent.

2. Learned counsel for the petitioner submits that the learned District Judge, Lahore has exercised the jurisdiction in irregular manner by withdrawing the cases and fixing them before himself and has also cast aspersions on the conduct of the Judicial Officers concerned. Further contends that the withdrawal and assignment of the cases is either in exercise of powers on the administrative side or the judicial side and none of the situation is applicable in the present

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case and the learned District Judge has gone beyond the contents of the application filed by the respondent and hence, acted in a manner that exhibits bias on part of the District Judge.

3. Conversely, learned counsel for the respondent submit that the impugned order was passed after hearing both the sides. Add that undoubtedly, no allegations of bias were alleged against any of the Judicial Officers, before whom the appeal of the petitioner and revision petition of respondent No.1 were pending, however, when the Court was apprised with the chequered history of the case, the learned District Judge decided to withdraw the said appeal and the revision and fixed the said cases before himself and in this regard drew guidance from the order dated 27.01.2023 passed by this Court in Transfer Application, filed by the petitioner, bearing T.A. No.75336/2022 whereby this Court directed the Senior Civil Judge Lahore to hear the cases himself instead of sending the same forming subject matter of said Transfer Application to Civil Judge, 1<sup>st</sup> Class, as prayed for by the petitioner in said T.A No. No.75336/2022. In this regard refers to the copy of order dated 27.01.2023 passed in T.A No. No.75336/2022, brought on record of this Court, through C.M. No.2/2023 filed by the respondent. Confronted with the situation, in rebuttal, learned counsel for the petitioner states that the earlier round(s) of litigation including T.A No.75336/2022 is not relevant to the decision of present petition.

4. Arguments heard. Record perused.

5. Perusal of the application of the respondent for transfer of the cases for hearing before one Court does not envisage any reservations against the learned Additional Judges seized with the appeal and revision, however, the operative part of the impugned order reads as under:

“4. Having heard learned counsel for the parties, present, and going through the available record, I am of the view that it would be appropriate in the interest of justice

and also to allay apprehension of petitioner that both the appeal and revision should be heard and decided by one court. The petitioner has also shown certain reservations against both the learned Addl. District Judges. So, for ends of justice, the petition is accepted and both the appeal and revision are withdrawn from the above mentioned courts and are brought on the file of this court.”

*(Emphasis supplied)*

6. The only controversy involved is whether the learned District Judge, Lahore was justified in passing the impugned order and fixing both the cases before himself. The petitioner has set up a case that in the absence of any reservation, against the Judicial Officers concerned, in the application filed by the respondent prayer whereof was confined only to the extent of consolidating the two cases before any one Court, and by casting the aspersions against the said Judicial Officers, the learned District Judge has committed illegality by withdrawing the cases from two different Courts and fixing them before himself. To put it differently, it is the case of the petitioner that the application of the respondent should have been allowed by consolidation of the cases before either of the two Courts before whom the appeal of the petitioner or the revision of respondent No.1, as the case may be, was pending. Thus, the impugned order can be bifurcated into two parts. One aspect relates to the scope of Section 24, CPC which confers power upon the District Judge to transfer and consolidate the cases pending before the Courts subordinate to him whereas the other is relating to the unwarranted aspersions cast upon the Judicial Officers.

7. The respondent side has explained that during the course of arguments the learned District Judge was apprised with the chequered history of the matter, which ended up before the Supreme Court of Pakistan and in the second round of litigation, T.A No.75336/2022 before this Court was filed by the petitioner for transfer of the case pending before Civil Judge Class-II to Civil Judge 1<sup>st</sup> Class and while disposing of the said Transfer Application, this Court directed the Senior

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Civil Judge concerned to hear and decide the matter himself and not the Civil Judge, 1<sup>st</sup> Class and in this backdrop, the learned District Judge has passed the impugned order. The explanation seems to be plausible. Perusal of T.A. No.75336/2022 and the order dated 27.01.2023 passed by this Court substantiates the contention of learned counsel for the respondent. The order passed by this Court in T.A. No.75336/2022 reads as under:

“27.01.2023 Mr. Ijaz Ahmad Khan, Advocate for the applicant.

Mr. Hafeez ur Rehman Chaudhary, Advocate for the respondents.

*Through this Transfer Application the applicant made a request that the execution petition titled “Muhammad Tariq Niaz v. LDA etc.” may be transferred from the learned Civil Judge, Class-II, Lahore to any court of Civil Judge, Class-I, Lahore.* The learned counsel appearing on behalf of the respondent has no objection for the acceptance of this transfer application.

2. In view of the above, this Transfer Application is hereby accepted and the execution petition titled “Muhammad Tariq Niaz Vs. LDA etc.” is *hereby transferred from the court of Mr. Muhammad Tariq Rasheed Qamar, Civil Executing Judge Class-II, Lahore to the learned Senior Civil Judge, Lahore who shall himself adjudicate upon the matter and complete the proceedings strictly in accordance with law as expeditiously as possible.*

(Emphasis supplied)

8. Moreover, the argument of learned counsel for the petitioner that the learned District Judge has travelled beyond the prayer of the application before him is misconceived inasmuch as the learned District Judge, on his own or on the application of a litigant, is empowered to

transfer the case from one Court to another Court subordinate to it or hear it himself. Section 24, CPC reads as under:

**“24. General power of transfer and withdrawal.**-- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.”

*(Emphasis supplied)*

9. It has been argued with vehemence that prayer of application of the respondent was only limited to combining/transferring the two cases before any one Court out of the learned Additional District Judges concerned who were hearing the cases, and keeping the said cases before himself shows personal interest of the learned District Judge. Argument is mis-conceived if not bizarre. Section 24, CPC does not specify any ground on which the case can be transferred from one Court to another. In the present case, transfer was solicited for the purpose of avoiding multiple proceedings and conflicting decisions on the same subject, between the same parties, involving common questions of fact and law that are interdependent, and after hearing arguments of the both sides, the learned District Judge thought it

expedient to keep the cases before him on account of its chequered history. Suffice to mention that there is neither any clog under the law debarring the District Judge from retaining and fixing the cases before himself nor the same renders the petitioner aggrieved of the impugned order. It is unpleasantly surprising that learned District Judge, Lahore has just fixed the cases before himself and is yet to proceed with the same, however, allegation of bias has been levelled against the Judge even before he proceeded with the matter, which is reflective of the shallowness of the contentions of the petitioner. Such preemptive allegation of bias devoid of any material or substance on record is liable to be thrown out invariably. It is a serious matter and such bald and unsubstantiated assertions cannot be countenanced and are not sufficient to upend the impugned order.

10. The above observation and opinion of this Court in respect of unsubstantiated and shallow allegation of bias is equally applicable to the second part of the impugned order passed by the learned District Judge, Lahore wherein he has observed that the respondent has reservations over the Judicial Officers hearing the appeal and revision of the parties, which is a cause of concern for this Court. While the impugned order through which the matters pending before two different Courts have been kept by the learned District Judge, Lahore before himself does not suffer from any illegality or irregularity, in the light of the chequered history of the *lis* between the parties; there was no justification to record observations regarding the Judicial Officers concerned. Suffice to observe that District Level Judiciary is the backbone of the judicial system in the country and is performing the onerous task of dispensing justice as held by the Supreme Court of Pakistan in case reported as “*Hasnain Raza v. Lahore High Court (PLD 2022 SC 7)*”. It is obligatory on part of this Court to protect and safeguard the District Level Judiciary from any onslaught or intrusion,

let alone in the form of observation, amounting to distrust or apprehension thereof *qua* the integrity of a Judicial Officer(s) in the discharge of the judicial work, by the learned District Judge, Lahore, who was exercising his discretion under Section 24, CPC, while deciding the Transfer Application of the respondent, more particularly, when no such allegation were levelled in the said application. Such observations bring the District Level Judiciary into disrespect that is exhibited by the fact that through the present petition generalized statement of bias has been made against the learned District Judge himself. This Court is of the opinion that the learned District Judges or the learned Additional Judges, across the province, while hearing the cases before them must show restraint in recording any observation in respect of the conduct of the Judicial Officers subordinate to them, which may tend to weaken the institutional independence of the Judiciary and bring it into disrespect.

11. For the above reasons, the present petition is devoid of any merits and the impugned order is upheld with the modification that the observation of the learned District Judge, Lahore thereof in the terms that "The petitioner has also shown certain reservations against both the learned Addl. District Judges" are uncalled for and shall not be read as part of the impugned order.

12. **Disposed of** in above terms.

(ANWAAR HUSSAIN)  
JUDGE

Approved for reporting

Judge

*Maqsood*