

**IN THE SUPREME COURT OF PAKISTAN**

**Present:**

Mr. Justice Yahya Afridi, CJ  
Mr. Justice Irfan Saadat Khan

**Civil Miscellaneous Application No. 100 of 2024**

Application under section 25-A (2-B) Family Courts Act, 1964

*Mst. Sidra Hameed etc.*

...Applicants(s)

**Versus**

*Syed Abdul Mateen*

...Respondent(s)

For the Applicant(s):

Mr. Muhammad Habib Ullah Khan, ASC

For the Respondent(s):

Dr. Babar Awan, Sr. ASC

Date of Hearing:

02.01.2025

**JUDGMENT**

**Irfan Saadat Khan, J.-** This judgment disposes of the present application seeking the transfer of the case for guardianship of minors from the Family Court, Islamabad (East) to another Court of competent jurisdiction namely the Family Court, Karachi (East) along with the pending Family Appeal from the District Court, Islamabad (East) to the District Court, Karachi (East).

2. Briefly stated the facts of the matter leading up to the instant Civil Miscellaneous Application are that the applicant No.1, who is the mother of the minors, had filed a suit for dissolution of marriage by way of *khula*; maintenance allowance for herself and the minors; and for the recovery of dowry articles against the respondent-father.



Thereafter, the learned Family Court, Karachi (East) granted her *khula* through its order dated 26.07.2014. The applicants had also filed an application for recovery of interim maintenance allowance which the Family Court allowed through its order dated 01.11.2014. Subsequently, on account of respondent-father's failure to deposit said interim maintenance allowance, the Family Court struck off the respondent-father's right to defence and decreed the suit as prayed for to the extent of maintenance allowance *vide* order dated 10.11.2015. Thereafter on 15.01.2020, the respondent-father filed a guardian petition for the permanent custody of minors before the Family Court, Islamabad, which was dismissed *vide* order dated 10.01.2023. Being aggrieved by the dismissal of his guardian petition, the respondent-father filed an appeal before the District Court which is still pending adjudication. The applicant-mother has also preferred a guardianship petition before the Family Court, Islamabad (East) which is still pending adjudication. Coming now to the controversy in the instant application, i.e. that the applicant-mother seeks the transfer of her guardianship petition as well as the respondent-father's family appeal to another Court of competent jurisdiction, citing various grounds.

3. Mr. Muhammad Habib Ullah Khan, learned ASC/AOR, has appeared on behalf of the applicants and has stated that the applicants are facing considerable hardships as they are living alone in Islamabad since the applicant-mother's current husband is a government employee working in the foreign service, currently



posted in the People's Republic of China. He highlighted that the applicants have no other relatives in Islamabad and thus have no option but to move to Karachi. He lastly submitted that the respondent/father has his permanent residence in Karachi and would be able to follow and pursue the proceedings even if the cases were transferred there. The learned counsel has therefore prayed that keeping in view the welfare of minors the instant application may be allowed and the applicant No.1's guardianship petition alongside the respondent's pending appeal may both be transferred to the learned Family Court, Karachi (East).

4. Dr. Babar Awan, learned Sr. ASC, has appeared on behalf of the respondent and has stated that the application has been filed under subsection 2b (the "**transfer subsection**") of section 25A of the Family Courts Act, 1964 (the "**FCA**"), which is only applicable to cases involving family matters and the instant cases do not fall within its ambit. He stated that in terms of section 4A of the Guardians and Wards Act, 1890 (the "**GWA**"), only High Courts are empowered to transfer proceedings under the Guardians and Wards Act, 1890 that too from District to District only. He stated that although this Court is empowered to transfer cases between provinces however, according to him, no jurisdiction is vested in this Court to transfer cases under the GWA. He highlighted that in terms of Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 ("**The Constitution**") neither under the Constitution nor under the GWA can the order sought be passed. He lastly submitted that



no proof of residence of the applicant nor any proof of enrolment of the minors in any educational institution was appended with the application. The learned counsel has therefore prayed that the instant application be dismissed.

5. We have heard both the learned counsel and perused the record with their assistance.

6. The application has been filed under subsection (2b) of section 25A of the Family Courts Act, 1964, which is reproduced below for facility of reference:

*"25A. Transfer of cases.– (1) Notwithstanding anything contained in any law the High Court may, either on the application of any party or of its own accord, by an order in writing–*

*...*

*(2b) 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 Supreme Court may at any stage transfer any suit, appeal or other proceedings under this Act pending before a Court in one Province to a Court in another Province, competent to try or dispose of the same."*

**[emphasis added]**

Under the foregoing subsection (2b), any party before a Court in proceedings under the FCA can apply to the Supreme Court for transfer of such proceedings to a Court of another Province. This Court thus after notice to the other party and hearing them, or on its own motion without notice, can transfer the case pending in one Province to another Province, as the case may be.



7. Section 4A of the GWA deals with the transfer of guardian cases. For ease of reference the said section is also reproduced below:

**“4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.—**(1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction sub—ordinate to a District Court, or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

(3) The Judge of a District Court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

[emphasis added]

Section 5 of the FCA states as under:

**“5. Jurisdiction.—** (1) Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in the Part I of the Schedule.”

Section 25 of the FCA states as under:

**“25. Family Court deemed to be a District Court for purposes of Guardians and Wards Act, 1890.—** A Family Court shall be deemed to be a District Court for the purposes of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall, in dealing with matters specified in that Act, follow the procedure prescribed in that Act.”

8. This Court has explained in the case of Anne Zahra<sup>1</sup>:

“7. ... As has been observed, the West Pakistan Family Courts Act, 1964 has overriding effect in so far as the matter included in the Schedule, therefore, initially it is the Family Court which has to be approached in respect of matters relating to custody of minor being one of the listed items in the Schedule...”

---

<sup>1</sup>Anne Zahra v. Tahir Ali Khilji (2001 SCMR 2000)



*“6. It is manifestly clear from the express provisions of the Family Courts Act that it is the Family Court under the said Act which has to be approached in the cases relating to custody of minors which Act has overriding effect over the Guardians and Wards Act, therefore, the question of territorial jurisdiction is to be decided under the said Act and the rules framed thereunder and the Guardians and Wards Act for that matter has no relevancy...”*

In the case of Muhammad Khalid Karim<sup>2</sup> this court while approving Anne Zahra's case (*supra*) held that:

*“11. ... (a) Under section 5 of the [Family Courts] Act of 1964, the Family Court has the exclusive jurisdiction to entertain, hear and adjudicate (emphasis supplied) all the matters which fall within the first schedule to the Act; this admittedly includes the custody and guardianship matter.”*

Muhammad Khalid's case (*supra*) in reaching the above conclusion further states:

*“the above view is also fortified from the provisions of subsections (4) and (5) of section 1 of the [Family Courts] Act of 1964, because it only had saved those cases for the jurisdiction of the Guardian Court which were pending at the time when the [Family Courts] Act, 1964 came into force, while all future matter which otherwise would have been within the jurisdiction of the Guardians and Wards Act were subjected to the jurisdiction of the Family Court.”*

In the case of Ihsan-ur-Rehman<sup>3</sup>, this Court while relying on the decision of an earlier case<sup>4</sup>, observed that:

*“It was held and rightly so that section 25 [of the FCA] permitted the Family Court when deemed to be District Court under the GWA to adopt the ‘procedure’ prescribed in the GWA as a mode of trial during the trial, and thereafter, insofar as the GWA is concerned, the Family Court becomes functus officio.*

*It clearly excludes the application of the GWA to the stage when the original trial ends except when the original trial Court, according to the various provisions of the Guardians and Wards Act, implements its own orders or regulates the conduct or proceedings of the guardians and similar other matters. The use of the word ‘matter’ in section 25 of the Family Courts Act*

---

<sup>2</sup> Muhammad Khalid Karim v. Saadia Yaqub (PLD 2012 Supreme Court 66)

<sup>3</sup> Ihsan-ur-Rehman v. Najma Parveen (PLD 1986 Supreme Court 14)

<sup>4</sup> Sakhawat Ali v. Shui Khelay (PLD 1981 Supreme Court 454)



*is in this context (in addition to the trial) and not in the context of appeals and revisions”.*

9. If the above provisions of law are read in conjunction and juxtaposition of the decisions given by this Court and the provisions of the FCA and the procedure set out therein, it would be clear that the matters of custody and guardianship both would also be governed under the FCA. Though section 25 of the FCA binds only the Family Court to follow the procedure of the GWA during the trial of guardian and custody matters; however, in our view the High Court’s and this Court’s power could not be curtailed via section 4A of the GWA, which as per the learned counsel for the respondent restrict transfers to interdistrict only.

10. Now the question is whether the cases sought to be transferred can be treated as proceedings under the FCA for the purposes of subsection (2b) of section 25A of the FCA? The term “proceedings” has not been defined in the FCA; it would thus be safe to apply its ordinary meaning. This court has carried out a similar exercise in Naeemullah Khan<sup>5</sup>, wherein the word “proceedings”, not having been defined in the relevant act, was considered to have its ordinary dictionary meaning. The Court concluded with respect to the import of the term “proceedings”:

*“we are of the opinion that the word ‘proceedings’ is a comprehensive expression which includes every step taken towards further progress of a cause in Court or Tribunal, from its commencement till its disposal. In legal terminology the word ‘proceedings’ means the instituting or carrying on of an action of law. Generally, a ‘proceeding’ is the form and manner of*

---

<sup>5</sup> The State v. Naeemullah Khan (2001 SCMR 1461)



*conducting judicial business before a Court or judicial officer, including all possible steps in an action from its commencement to the execution of a judgment and in a more particular sense it is any application to a Court of justice for aid in enforcement of rights, for relief, for redress of injuries, or damages or for any remedial object. It in its general use comprehends every step taken or measure adopted in prosecution or defence of an action."*

**[emphasis added]**

11. Applying this meaning to the word 'proceedings', we are sanguine that guardianship and custody cases, which are instituted in the Family Courts, would be treated as proceedings under the FCA. Hence, in the absence of any specific provision in GWA regarding transfer of matters from one Province to another, guardianship and custody cases could be transferred according to subsection (2b) of section 25 of the FCA. The application for transfer thus could therefore be filed before this Court and dealt with in accordance with law.

12. Having determined that the Supreme Court has the jurisdiction to entertain GWA cases under the transfer subsection, it is pertinent to consider whether the said subsection, while explicitly providing for the transfer of cases between provinces, also allows for the transfer of cases to and from the Islamabad Capital Territory? This aspect too has been comprehensively dealt with by this Court in Rabia Ahmad<sup>6</sup> wherein it was held:

*"2. Be that as it may, it is apparent from section 25-A(2- B) that all parties before a Court in proceedings under the Act have a remedy to seek the transfer of such proceedings to a competent Court in another province on the ground of, inter alia, expeditious disposal and convenience of the parties, particularly females and minor children. This is the law laid down in respect of transfers made under the afore-noted provision. In the present case,*

---

<sup>6</sup> Rabia Ahmad v. Bilal Ejaz (2022 SCMR 733)



however, the said statutory remedy is not available to litigants seeking transfer of their proceedings to and from the ICT. There is no ground to justify the denial of this relief to litigants in Islamabad, especially when litigants in other parts of the country are entitled to it. Therefore, it is our considered view that in such circumstances the Court can resort to its extraordinary jurisdiction under Article 187 of the Constitution to provide for the transfer of proceedings. For ease of reference, the said provision is reproduced below:

"187. Issue and Execution of Processes of Supreme Court. Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, orders or decrees as may be, necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document."

The ambit of this Court's power to do complete justice in matters pending before it was discussed in detail in the case of Dossani Travels Pvt.Ltd. v. Messrs Travel Shop, Pvt. Ltd. (PLD 2014 SC 1). The relevant portion from this judgment is produced below:

"41: While seized of petitions under Article 199 of the Constitution, the High Courts at times are faced with prayers to pass order and Provide relief for "doing complete justice". But such powers in constitutional jurisdiction are vested in the Supreme Court under Article 187 of the Constitution. These powers are distinct both in scope and the manner of their exercise. The Apex Courts in most of the democratic countries enjoy such powers. The powers of this Court to pass any order or give any direction "for doing complete justice" are similar to those which the Supreme Court of India enjoys under Article 142 of the Constitution of India.

42: In both the above quoted provisions, the paramount consideration and the constitutional intent is common i.e. "for doing complete justice". These powers being inherent are complementary to those which are specifically conferred on the Court by the Constitutions of these two countries. These powers remain undefined so that the Court can cater to an situation and could even mould the relief... The rationale appears to be that in situations which cannot be resolved by existing provisions of law and warrant an intervention by the Court it may pass an order to ensure "complete justice". This can also be used where the Court finds a gap in legislation and a solution is required till the Legislature acts and covers the field."



(emphasis supplied)

*A perusal of the above quoted passages makes it clear that the power of this Court to do complete justice has intentionally been left undefined to ensure that it can cater to any and all situations where the law as it exists leads to injustice. Such power can in fact even be used, as has been recognized in the Dossani Travels case (supra), to cover up gaps in the legislation. In the present case, though we are also faced with a similar problem in that section 25-A(2-B) of the Act does not provide for the transfer of cases from the Courts in ICT to the Courts of another Province and vice versa, nevertheless this Court has ample power under Article 187 of the Constitution to do complete justice by transferring proceedings to and from the ICT in deserving cases to other Provinces of the country.*

13. Thus, for the convenience of the parties, particularly females and minors, as in the present case, this Court has the power and authority to transfer GWA cases to other Provinces of the Country or to the Islamabad Capital Territory (“ICT”) or *vice versa* in deserving cases. In the instant case, there is no dispute that, at present, the minors are living with their mother. Naturally then, the minor’s welfare would follow their mother’s residence. Hence, the respondent’s contention that it was necessary for the applicants to attach documents proving the applicants’ residence and minors’ enrolment in school at Karachi, is without any merit.

14. We, therefore, in view of what has been stated above allow the application filed by the applicants and transfer the applicant’s guardianship petition pending before the Family Court (East), Islamabad under the title Sidra Hameed and others versus Syed Abdul Mateen, as well as the respondent’s family appeal pending before the District Court (East), Islamabad under the title Syed Abdul



Mateen versus Sidra Hameed and others alongside complete record  
to the District Court, Karachi (East).

ISLAMABAD

Arshed/Mustafa Kundi, L.C.

Announced in open Court on 30/1/2025

"Approved for Reporting"