

PESHAWAR HIGH COURT,
BANNU BENCH.

FORM 'A'

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge (s).
(1)	(2)
12.08.2014	<p><u>T.A No.11-B of 2014.</u></p> <p>Present:</p> <p style="padding-left: 40px;">Muhammad Nisar Khan Sokari Advocate for Petitioners.</p> <p style="padding-left: 40px;">Syed Umer Ali Shsh Advocate for respondent.</p> <p style="text-align: center;">***</p> <p><u>MUHAMMAD DAUD KHAN, J.-</u> This is a transfer application under section 25-A, West Pakistan Family Court Act, 1964, filed by the petitioner/wife Mst: Shabana Begum and others.</p> <p>2. The brief facts out of which the present application arises are that the petitioner/wife and respondent solemnized marriage since 5 years back in accordance with Sharia. Out of the wedlock of the parties, two</p>

	<p>children i.e. petitioners No.2 and 3 born and now residing with the petitioner at Karak. The relationship of the spouses became strained and filed their respective family suits against each other. The petitioners filed their suit in the Court of Civil Judge/Judge Family Court, Takht-e-Nasrati, Karak for:</p> <p>(a) Recovery of maintenance at the rate of Rs.6000/- per month and Rs.2000/- per month as maintenance for children i.e. petitioners No.2 and 3.</p> <p>(b) Suit for recovery of Rs.8000/- per month for medical treatment for minor Suhana i.e. the petitioner No.3 as she is suffering from cancer.</p> <p>(c) 20 Tolas gold as dower.</p> <p>(d) Recovery of Dowry articles as per list.</p> <p>3. On the other hand the respondent filed the suit for restitution of conjugal rights and recovery of 5 Tolas gold ornaments in the Court of</p>
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	<p>Civil Judge-VIII/Judge Family Court, Bannu.</p> <p>4. The petitioner lady and her children through this application prayed that the case title Naeem-ud-Din Vs Mst: Shabana Begum, which is pending in the court of Civil Judge-VIII/Judge Family Court, Bannu No.18/FC, instituted on 29.01.2014 be transferred to Takht-e-Nasrati, District Karak where the former family suit of the petitioners titled Mst: Shabana Begum and others Vs Naeem-ud-Din is pending.</p> <p>5. Mr. Muhammad Nisar Khan Sokari, learned counsel for the petitioners submitted that petitioners No.1 and 2 are female baby children, both aged of below four years and one is suffering from cancer and the case is filed by the respondent at Bannu seems only as counter-blast simply to harass the petitioners, therefore, the transfer of the instant case is necessary for the convenience of lady and small babies.</p>
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	<p>6. On the other hand Mr. Syed Umer Ali Shah, learned counsel for the respondent vehemently opposed the said application and submitted that as suit of the respondent/husband has been instituted prior to the suit of the petitioners, therefore, legally, both the suits are to be tried at the place, where the first suit was instituted.</p> <p>7. Arguments heard and record perused.</p> <p>8. It appears that the respondent/husband has filed the suit at Family Court, Bannu prior to the institution of the petitioners' suit at Takht-e-Nasrati, District Karak, but it is a settled principle of law that the courts have always see the convenience of the lady and the children, while deciding a transfer application. In the case in hand the petitioner is Parda observing lady and two babies, one is patient of cancer and the other is suckling baby residing with the mother/petitioner</p>
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	<p>and she manage to look after both of them. It is also settled principle of law that in family cases convenience of the female and children especially the babies litigants be kept in view as the husband being a male can undergo certain amount of hardship but the parda observing lady and suckling baby cannot bear the hardships. The distances between Takht-e-Nasrati and Bannu is so far the wife/ petitioner along with her small babies could not trevel and appear before the court at Bannu easily, especially in the hot and cool months of summer and winter. Therefore, it is the requirement of justice that convenience should be given to the woman folk who is looking after such small babies in such a hard situation prevailing at Bannu. It is a settled principle of law referred by the superior court from time to time that suit arising under Family Court Act between the same parties should be tried by one and the same court</p>
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and place, most suitable for such trial, is the place, where the wife is residing, in order to avoid any conflicting judgment, in the interest of justice and fair play.

9. In the light of above circumstance the application is allowed and suit filed by the respondent titled Naeem-ud-Din Vs Shabana Begum, for restitution of conjugal right is hereby withdrawn from the court of Civil Judge-VIII/Judge Family Court, Bannu and entrusted to Civil Judge/Judge Family Court, Takht-e-Nasrati, Karak for adjudication in accordance with law.

Announced
12.08.2014

JUDGE

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