

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.54194 of 2023

Aun Akhter & another

Versus

Ahmad Abdul Rehman, etc.

J U D G M E N T

Date of Hearing	26.09.2023
For the petitioners	Mian Muhammad Hussain Chotya, Advocate
For respondent No.1	M/s Rafique Ahmad Bhatti and Shafe Munir, Advocates
For respondents No.3 & 4	Mr. Nadeem-Ud-Din Malik, Advocate
Amicus Curiae	Ms. Shaffaf Shahid Latif, Advocate

Raheel Kamran J:- In this civil revision, the petitioners have assailed the order dated 17.07.2023 passed by the District Judge, Pakpattan whereby application moved by them for withdrawal of cases of civil nature mentioned therein from the Court of Senior Civil Judge (Family Division), Pakpattan and transfer to the Court of Civil Judge or Senior Civil Judge (Civil Division), Pakpattan was dismissed.

2. Learned counsel for the petitioners contends that civil matters have been entrusted to the Judge Family Court without any lawful justification. He maintains that according to section 5 of the Family Courts Act, 1964 (‘the Act’) and Part-I of the Schedule to the Act, a Judge Family Court is possessed of jurisdiction only to adjudicate upon family disputes and unless such power is conferred upon it by law, it cannot adjudicate upon other disputes of civil nature.
3. Conversely, learned counsel for respondents No.3 & 4 contends that sections 12(2) and 15 of the Punjab Civil Courts Ordinance, 1962

empower the District Judge to entrust a civil case to any Court or himself decide it as the District Judge, which imposes no embargo whatsoever on entrusting a case to a Civil Judge performing duties as Judge Family Court. In support of his contention, he has placed reliance on the case of Mian Umar Ikram-Ul-Haque vs. Dr. Shahida Hasnain and another (2016 SCMR 2186).

4. Learned *amicus curiae* contends that the Family Courts Act, 1964 does not expressly or by necessary implication restrict a Civil Judge designated as the Judge Family Court from exercising its general jurisdiction in civil proceedings. She maintains that it is an incontrovertible principle of law that Family Courts are Civil Courts. Reliance in this regard is placed on the case of Mirza Daud Baig vs. Additional District Judge, Gujranwala and others (1987 SCMR 1161). According to her, exclusivity of jurisdiction under section 5 of the Act is only applicable where a Family Court is entertaining a suit under the Act and it is not relevant where a Civil Judge, who has been designated as a Judge Family Court, is hearing a civil suit in his or her general jurisdiction, therefore, misdescription of designation does not have any effect on the legality of the trial, which falls within the maxim *falsa demonstratio non nocet*. In support of her contention, she has placed reliance on the cases of Piao Gul vs. The State (PLD 1960 Supreme Court (Pak.) 307), Mst. Razia Begum vs. Mst. Sardar Begum and others (PLD 1978 Lahore 696) Allah Jiwaya vs. Judge Family Court, Ahmadpur Sharquia and another (1990 MLD 239). She further contends that the provisions of the Act must be read literally by giving the words used therein ordinary, natural and grammatical meaning. The addition and subtraction of a word in a statute is not justified except where for the interpretation thereof, the principle of reading in or reading down may be pressed into service, therefore, since not a single provision of the Act or the rules framed thereunder provides that a Civil Judge presiding over a Family Court is precluded from entertaining civil suits under its plenary and general jurisdiction, therefore, such a restriction cannot be read into the Act as

per settled principles of statutory interpretation. Reliance in this regard has been placed on the case of Syed Mukhtar Hussain Shah vs. Mst. Saba Imtiaz and others (PLD 2011 Supreme Court 260).

5. In rebuttal, learned counsel for the petitioners contends that the judgments relied upon by learned counsel for respondents No.3 & 4 as also the learned *amicus curiae* are distinguishable on facts inasmuch as there existed a definite nexus between proceedings before the Family Court or as the case may be the Rent Tribunal and the suit which was transferred to the same whereas no such nexus has been established in the instant case. He maintains that the instant case involves transfer of suits for partition, specific performance of the contract and declaration in relation to the suit property. He further contends that there exists a distinction between transfer and entrustment of cases under section 24 of the Code of Civil Procedure, 1908 and delegation of powers to Judge Family Court under the provisions of sections 12(2) & 15 of the Punjab Civil Courts Ordinance, 1962. He adds that a Judge presiding over a Family Court ceases to be a Civil Court for the purpose of Code of Civil Procedure, 1908. In this regard reliance has been placed on the case of Mst. Mahpara vs. S. Arshad Mahmood and another (1999 CLC Lahore 514). He lastly contends that there are eight seats of 2nd Class and six of 1st Class Civil Judges in the concerned District and none of those was vacant at the relevant time, therefore, the impugned order has been passed on extraneous consideration.

6. Heard. Record perused.

7. It is noteworthy that in the scheme of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') the right of an individual to enjoy the protection of law and to be treated in accordance with the law has been provided. Article 4, *inter alia*, ordains that no person shall be prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do that which the law does not require him to do. While a person is constitutionally guaranteed above freedom, there is no inherent power vested in the state organs or authorities to act save for the authority

conferred by the Constitution and the law and any act done by the state functionaries, order passed or direction issued, if not sanctioned by the Constitution or the law, is an act without lawful authority¹. Besides the above general position, there is a specific provision of Article 175(2) in the Constitution that embodies fundamental principle governing jurisdiction of the courts which mandates that no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. There is thus no constitutional or legal presumption that in the absence of any restriction placed by law on him/her, a Judge Family Court has jurisdiction to adjudicate upon disputes of other civil nature rather the presumption is the other way round and for a Judge Family Court to exercise such authority, jurisdiction must be conferred on him or her by the law.

8. The Act has been promulgated to establish a quasi-judicial forum i.e. the Family Court, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial. The object of the Act is to minimize the technicalities and procedural holdups for the purpose of speedy justice between the parties in shortest possible time and manner. The Act has changed the forum and also altered the method as to how the trial under the Act is to be proceeded and case decided. A bare reading of the Act clearly suggests that by willful exclusion of procedure as prescribed under the Code, much has been left at the discretion of the Family Court to conduct trial in the manner as provided under the Act and also to adopt all possible measures and take all such steps, which result in achieving the purpose and object of the Act.

Section 3 of the Act provides for the establishment of one or more of Family Courts by the Government in each District in consultation with the High Court consisting of District Judge, Additional District Judge, Civil Judge. Section 12A of the Act provides a period of six months for disposal of the case from the date

¹ Pakistan Muslim League (N) v. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642)

of its institution. Through section 17 of the Act, provisions of the Code of Civil Procedure, 1908 (except for sections 10 & 11) and Qanun-e-Shahadat, 1984 have been made inapplicable and the purpose of enacting such section was in fact to give effect to the preamble of the Act, which provides that it is meant for expeditious settlement and disposal of disputes². The nature of disputes which can be brought before the Family Court for adjudication have been set forth and enumerated in Part-I of the Schedule referred to in section 5 of the Act. In order to appreciate scope of jurisdiction of the Family Courts, it is imperative to have a glance at section 5 of the Act and Part-I of the Schedule, which are reproduced hereunder: -

*“5. **Jurisdiction.** (1) Subject to 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 (Part I of the Schedule)”*

“Schedule (Part I)

- 1. Dissolution of marriage (including Khula).*
- 2. Dower.*
- 3. Maintenance.*
- 4. Restitution of conjugal rights.*
- 5. Custody children (and the visitation rights of parents to meet them.)*
- 6. Guardianship.*
- 7. Jactitation of marriage.*
- 8. Dowry.*
- 9. Personal Property and belongings of a wife.*
- 10. Any other matter arising out of the Nikahnama”*

9. It is abundantly clear from section 5 of the Act that it confers exclusive jurisdiction upon the Family Court to entertain, hear and adjudicate upon matters specified in Part-I of the Schedule. On account of exclusive jurisdiction of the Family Courts over family disputes, Civil Courts, which are the courts of inherent and plenary jurisdiction competent to adjudicate upon all disputes of civil nature except the suits of which their cognizance is barred either expressly or

² Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others (2011 SCMR 1361); Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore and others (2014 SCMR 1365); Haji Muhammad Nawaz v. Samina Kanwal and others (2017 SCMR 321); Muhammad Asim and others v. Mst. Samro Begum and others (PLD 2018 Supreme Court 819) and Muhammad Arshad Anjum v. Mst. Khurshid Begum and others (2021 SCMR 1145)

by necessary implication, have no authority to adjudicate upon such disputes.

10. Whether a Civil Judge who is presiding over the Family Court has authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act? is the question involved here. Reliance has been placed on the provisions of sections 12(2) and 15 of the Civil Courts Ordinance, 1962 ('the Ordinance') to support the impugned order.

11. Undoubtedly, Family Courts fall within one of the classes of Civil Courts recognized under section 3 of the Ordinance for having been established under the Act, which is in force for the time being. The other classes of courts include the Court of District Judge, Court of Additional District Judge and the Court of the Civil Judge³. Section 7 of the Ordinance confers unlimited pecuniary jurisdiction of the District Judges in original civil suits, except as otherwise provided in any enactment for the time being in force, whereas section 9 of the Ordinance empowers the High Court to determine and classify pecuniary jurisdiction of civil judges in original civil suits. Likewise, provisions of sections 5, 6 and 10 of the Ordinance, *inter alia*, govern territorial jurisdiction of District Judges, Additional District Judges and Civil Judges.

12. Since counsels have heavily relied on the provisions of sections 12(2) & 15 of the Ordinance, it would be advantageous to reproduce the same for clarity: -

“12. Exercise by Civil Judges of Jurisdiction of District Courts in certain proceedings.— (1) *Notwithstanding anything contained in the Succession Act, 1925, the High Court may, by general or special order, authorise any Civil Judge to take cognizance of or any District Judge to transfer to a Civil Judge under his control, any proceedings or class of proceedings under the said Act.*

(2) *The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Civil Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.*

³ Section 3 of the Ordinance

Provided that nothing herein contained shall empower a District Judge to withdraw such proceedings as have been specifically transferred from his Court by the High Court.
 (3)

“15. Power to distribute business.—Notwithstanding anything contained in the Code of Civil Procedure, 1908, every District Judge may by written order direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:

Provided that no direction issued under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.”

Section 12(2) of the Ordinance empowers a District Judge to withdraw any proceedings taken cognizance of by or transferred to a Civil Judge to either himself dispose of the same or transfer to a Court under his control competent to dispose it of, with the exception that no power of withdrawal is available to the District Judge in relation to such proceedings as have been transferred from his Court by the High Court. It is thus apparent that the power of the District Judge under section 12(2) *ibid* is limited in its scope to transfer proceedings only to such a Court as would be competent to dispose it of. Section 15 of the Ordinance empowers the District Judge to distribute civil business cognizable by his Court and the Courts under his control by written order, in such manner as he thinks fit, however, it may be emphasized that proviso to the said section mandates that no direction issued under that section could empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction.

It is thus abundantly clear that be it the power of withdrawal and transfer under section 12 of the Ordinance or the power to distribute business under section 15 of the Ordinance, no authority is vested in the District Judge to entrust any matter to and empower a Civil Judge to adjudicate upon any civil claim beyond the limits of its jurisdiction, in particular over the subject matters covered by special enactments.

13. There is thus no provision in the Punjab Civil Courts Ordinance, 1962 or the Family Courts Act, 1964 or the rules made

thereunder which confers authority upon the Family Courts to adjudicate upon civil disputes other than those specified in Part-I of the Schedule to the Act. See section 14 of the Ordinance.

14. Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation⁴. Moreover, section 14 of the Ordinance stipulates that Civil Courts in the area to which the Ordinance extends shall be subordinate to the High Court, and, subject to the general superintendence and control of the High Court, the District Judge shall have control over all Civil Courts within the local limits of his jurisdiction. The above provisions, however, do not take away or restrict authority of this Court to empower Judges of the Family Court to additionally exercise powers of the Civil Courts if so notified. But in the instant case, learned counsel for respondents No.3 & 4 has not been able to refer to any such power conferred upon the Judge Family Court.

15. Without prejudice to the foregoing, assuming for the sake of argument that a discretion is available with the District Judge to transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, would it be proper exercise to allow such a transfer? The answer may well be in negative. The Family Court cannot ordinarily hear the civil suits for such Courts have been established for expeditious settlement and disposal of disputes regarding marriage and family affairs and the matters connected therewith. Except for the disputes having unavoidable nexus with the disputes being adjudicated by the Family Court which, if at all could be referred to the Civil Judge presiding over the Family Court, it would be clearly improper exercise of discretion on part of the

⁴ Sh. Liaqat Hussain and others v. Federation of Pakistan & others (PLD 1999 SC 504)

District Judge to entrust any ordinary civil dispute to the Family Court having no nexus whatsoever with any pending family case. In forming such opinion, this Court is additionally fortified by the consideration of effective administration of justice inasmuch as efficiency of the Family Courts, which are required to proceed expeditiously with the matters without strictly adhering to the rules of procedure and evidence embodied in the Code of Civil Procedure, 1908 and Qanun-e-Shahadat 1984, would be undermined if made to adjudicate upon ordinary civil disputes where the above enactments are required to be applied.

16. In the instant case, the reason that prevailed with the District Judge was that there was shortage of judicial officers in the District Pakpattan, as three Civil Judges were transferred without substitute whereas according to the petitioners' counsel there was no such shortage in the said District. The office was, therefore, directed to apprise this Court of the sanctioned strength of Judicial Officers and that of working in the District Pakpattan, according to which, sanctioned strength of the Civil Judges and Senior Civil Judges was nineteen whereas eight of them were posted there. Although total strength of the Civil Judges was not available at the concerned District, however, for the reasons stated above, it was not appropriate that those civil cases which had no nexus with any pending family dispute should be entrusted to the Family Court.

17. The precedents relied upon by learned counsel for respondents No.3 & 4 as well as learned *amicus curiae* are not relevant and the same are distinguishable on facts. In the case of *Mian Umar Ikram-Ul-Haque* (supra), one party had filed an eviction petition whereas the other had filed suit for specific performance of the contract and the Supreme Court of Pakistan had ordered that both the matters be tried by the same Court. In the case of *Syed Mukhtar Hussain Shah* (supra) referred to by the learned *amicus curiae*, the question related to jurisdiction of the Family Court over a claim for recovery of an amount on the basis of entry in *Nikahnama* as well as a condition in an agreement between the parties (ex-spouses) and there were two

divergent judgments of this Court on interpretation of entry No.9 of Part-I of the Schedule to the Act, which conflict was resolved by the Supreme Court declaring lack of jurisdiction of the Family Courts in holding that the said entry did not include any amount which was not yet property of the wife but she only had a claim to recover from the husband while adhering to the literal rule of statutory interpretation. In fact that judgment supports the view that what does not fall within the jurisdiction of the Family Court could not be adjudicated upon by it.

18. For the foregoing reasons, this civil revision is allowed and while setting aside the impugned order dated 17.07.2023, the District Judge, Pakpattan is directed to transfer cases, subject matter of the application, to any of the Civil Judges competent to adjudicate upon the same who ordinarily is seized of civil matters in accordance with law.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on 09.04.2024.

JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar