

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE SYED MANSOOR ALI SHAH

CMA NO. 284 OF 2021

(For transfer of family suit from one Province to another)

Mst. Kulsoom Rasheed

.....**Applicant(s)**

Versus

Noman Aslam

....**Respondent(s)**

Applicant(s): Kulsoom Rasheem (In person)

For the Respondent(s): N.R.

Date of hearing: 23.02.2021

ORDER

Mushir Alam, J.- It appears that the suit for recovery of maintenance and dowry articles filed in the court of Judge Family Court, Islamabad West was decreed ex-parte vide judgment dated 24.02.2020. From the record it appears that the respondent is resident of Karachi and the decree could not possibly be executed at Islamabad. The applicant in person through titled application prays for transfer of the titled case from Judge Family Court Islamabad-West to the court of competent jurisdiction/Judge Family Court, Karachi (Sindh) in terms of Section 25-A (2-B) of the Family Courts Act, 1964. For facility of reference the said provision is reproduced below:-

"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.

...

(2a)...

(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 state 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 supplied)

2. Bare perusal of the above provision reveals that this Court may order the transfer of proceedings pending from one jurisdiction to another more particularly from one Province to another either at the motion of the parties or on its own motion without notice.

3. In view of the above stated legal position and looking into the facts and circumstances of the case, it would be cumbersome to issue notice to the respondent, who is resident of Karachi. Even otherwise it will burden the respondent with heavy cost on travelling or contesting the matter here. In order to protect the rights and interest of the parties and to ensure that right as conferred by Article 10A of the Constitution "fair trial" is protected, this Court can always make an order of transfer and the transferee court may take further proceedings from where it is left by the Court from which matter is transferred, only after due service of notice on the respondent. In view of the fact that the matter in issue relates to the execution of a decree passed in favour of the petitioner, who is also the wife of the respondent, the execution proceedings, in order to facilitate expeditious disposal, are ordered to be transferred from the Family Court/Guardian Judge, Islamabad-West to the District Judge, Karachi (concerned) who shall assign the matter to the competent Family Court concerned for the purpose of the execution of the judgment and decree noted above after due service on the respondent.

4. This CMA is accordingly disposed of in the above terms.

Judge

Islamabad,
23rd February, 2021.
Approved for reporting
Iqbal

Judge