

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN,
QUETTA.

Civil Revision Petition No. 510 of 2024
(CC # 100107703475)

Shams ud Din v. Zia ud Din and others

o r d e r

Date of hearing: 10.09.2024 Date of announcement:

For petitioner: Sheikh Muhammad Ali, Advocate.

Rozi Khan Barrech, J: Through the instant Civil Revision Petition, the petitioner has challenged the order dated 17.08.2024 (hereinafter the "**impugned order**") passed by learned District Judge Sariat Division Quetta (**appellate court**) whereby the application filed by the petitioner for transfer of the suit titled as Shams ud Din v. Faryal Bibi being Civil Suit No. 78/2024 and civil suit titled as Faryal Bibi v. Shams ud Din and others being Civil Suit No. 79/2023 from the court of Senior Civil Judge-I Sariat Division Quetta (**trial court**) to any other court of competent jurisdiction was dismissed.

2. Succinctly, the facts of the case are that the petitioner filed a civil suit titled as Shams ud Din v. Faryal Bibi and others, and the respondent filed a civil suit titled as Faryal Bibi v. Shams ud Din and others before the trial court and during the pendency of the suit the petitioner filed an application under section 24 of Civil Procedure Code for transfer of suit from the court of the trial court

to the file of any court of law largely on the ground of biasness of the learned Presiding Officer, seized with the trial of the subject cases.

3. Notice was issued to the respondents, and after hearing arguments on the application under section 24 of the Civil Procedure Code, the learned appellate court dismissed the same vide impugned order dated 17.08.2024, whereafter the instant petition was filed.

4. I have heard the arguments of the petitioner and also perused the record.

5. The transfer of the case being sought mainly on the grounds of biasness of the learned Presiding Officer, seized with the trial of the subject case. The Honorable Apex court, in a case of Pakistan Newspaper Society and others v. Federation of Pakistan (PLD 2012 SC 1) has graciously laid down that;

“bias is said to be of three different kinds:--

(a) A Judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation, so as to constitute a legal interest.

A 'legal interest' means that the Judge is 'in such a position that a bias must be assumed'

(b) Pecuniary interest in the cause, however, slight, 'will disqualify the Judge, even though it is not proved

that the decision has in fact been affected by reason of such interest. For this reason, where a person having such interest sits as one of the Judges the decision is vitiated.

- (c) *A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events happening either before or during the trial. Whenever there is any allegation of personal bias, the question which should be satisfied is - "Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial?" The test is whether there is a 'real likelihood of prejudice', but it does not require certainty." 'Real likelihood' is the apprehension of a reasonable man apprised of the facts and not the suspicion of fools or 'capricious persons'.*

6. Keeping in view the aforementioned dictums laid down by the apex court, it can be safely observed that the petitioners have failed to establish the bias in Judge because utterances of the other side that they will get favour from the court do not constitute sufficient ground for transfer of the case from one court to another. The contention of the petitioners that the trial court is biased against the petitioners is not supported by any sort of evidence. In order to demonstrate bias against a Judge it must be established

that some act or expression of a judge visible on the ground will adversely affect the case. Mere assumption and apprehension cannot be entertained as a piece of tangible evidence; therefore, the bald statement cannot be made the basis for the transfer of case, and the case would not be transferred as a matter of routine or at the whims of the parties. The administration of justice requires that litigants should have confidence in the judicial system. However, an application could be filed for transfer of a case when a party has sufficient reasons, grounds, and evidence in his/her possession regarding pecuniary interest, and bias of judicial officer. Certainly, these elements are not available in the case in hand.

7. The allegations leveled in the petition when examined, reveal that no substantial evidence has been attached/annexed along with the application for transfer of the case. Most of the allegations are of a vague and mysterious nature, having no substance. Whether mere an apprehension of not getting justice from the hands of the court could be ground for the transfer of the case, surely this is not the position of law on the subject. For one to prove bias of a judge has to prove through trustworthy evidence.

I have minutely gone through the record and the impugned order, and there is no ground for interference under the revisional jurisdiction by this court. In view of the above this petition is dismissed in limine.

Date of announcement:

Judge