

Transfer of Civil Cases





RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: MR. JUSTICE HON'BLE SHAUKAT ALI RAKHSHANI.

SUBJECT: Grounds For transfer of Civil Cases

DATE: 21ST DECEMBER, 2024.

BY: RESEARCH CENTRE

QUERY: - What are the grounds for transfer of Civil Cases from one court to another?

A civil case can be transferred from one court to another upon the request or application of a party or the Highcourt or District Court on its own motion may do so at any stage. However, the transfer of a case from one court to another can be granted in exceptional circumstances, and when it is in the better interest of justice.

It has been held by the superior courts in numerous judgments that the court must be convinced that there is a reasonable apprehension that the current court may not act fairly in imparting justice. However, the transfer of a case is not a matter of routine and cannot be claimed as a right by any party. The court must assess whether the apprehension is reasonable based on the peculiar facts and circumstances of each case. Mere dissatisfaction or loss of confidence in the court is not sufficient for a transfer of the case. The party seeking the transfer must provide solid grounds and serious events that indicate that justice will not be served by the court.

In 2018 CLC 1578 (Sindh (Hyderabad Bench)) it has been held that the transfer of a case from one court to another should not be taken as a routine matter, rather should be done in exceptional circumstances only when it is in the interest of justice. The matter should be dealt with utmost caution

as transfer would amount that the parties have no confidence on the trial judge. Relevant portions of judgment are reproduced as under.

“It is well settled law that the transfer of a matter from one Court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interests of justice.”

It is the considered view of this Court that an unmerited transfer of a case from one court to another would tantamount to an expression of no confidence in the said trial Judge.

Similarly, it has been held in **2017 YLR 2224** that mere dissatisfaction of a party or assertion of lack of confidence of a party on the court cannot be made ground for transfer of a case unless such assertions and allegations are supported by cogent grounds that continuation of trial of the case in that court would result in miscarriage of justice. Relevant part of the judgement is reproduced as under;

“While dealing with the transfer application, Court should examine the entire allegations in the purview of other connected circumstances and reasons narrated therein thoroughly, mere expressing dis-satisfaction or demonstrating loss of confidence upon the Court is not sufficient for the transfer of the Case from one Court to another Court. It is well settled that the aggrieved party seeking transfer of the case from one Court to another Court should place solid grounds and serious events in support of his allegations which prime facie reflect that there are sound reasons that justice will not be administered by the trial Court and non transfer of the matter will cause miscarriage of justice. Case should not be transferred on the mere wish and whim of the party which has failed to obtain orders from the trial Court as per its own choice, and moved transfer application with sole object to cause unnecessary delay in

dispensation of justice. Now a days, a trend has developed that transfer applications are being preferred as a routine without any legal justification which on one hand are causing delay in adjudication of the main case, and on other hand causing harassment to the trial Court not to pass judicial orders prudently. It is need of the time that such mal-practice should be discouraged by the appellate Courts.”

Generally, parties seek transfer of cases from one court to another on the ground/allegation of bias of a judge. In such circumstances it is imperative to ascertain that what is meant by bias of a judge. In **PLD 2012 Supreme Court 1**, the August Supreme Court has elaborated on the concept of bias, categorizing it into three types: **subject-matter bias**, **pecuniary bias**, and **personal bias**. Subject-matter bias arises when a judge is directly connected to the litigation, creating a legal interest that disqualifies them to ensure impartiality. Pecuniary bias involves even minimal financial interest, which, irrespective of actual influence on the decision, is sufficient to invalidate proceedings. Personal bias stems from relationships, hostility, or prior events that could lead a reasonable person to apprehend unfair treatment. The Honorable Court has highlighted the test for bias, stating that it is not the judge's actual partiality but whether a reasonable person, aware of the facts, would perceive a likelihood of unfairness. Relevant Portions of the judgment are given as under;

Bias in a judge---

----Kinds of such bias enumerated.

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'.

In **2022 MLD 908**, the honorable court has held that civil cases should not be transferred on mere allegations or apprehensions of bias without concrete evidence. The prerequisite for a case to be transferred on the ground of bias, it must be demonstrated that the judge has a direct connection to the litigation, a pecuniary interest, or personal hostility affecting the impartiality of proceedings. Vague claims, assumptions, or statements from opposing parties suggesting favoritism do not constitute valid grounds for transfer. The court highlighted that litigants must provide substantial and trustworthy evidence of acts or expressions by the judge that visibly compromise impartiality. Cases cannot be transferred as a matter of routine or on the whims of parties, as doing so would

undermine confidence in the judicial system. Relevant part of the judgment is reproduced as under;

“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 does not constitute sufficient ground for transfer of case from one court to another. 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 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 tangible evidence therefore, bald statement cannot be made basis for transfer of case and the case would not be transferred as a matter of routine or at the whims of the parties. Administration of justice requires that litigants should have confidence in the judicial system.”