FORM No. HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT,

LAHORE

JUDICIAL DEPARTMENT

T.A.No. 40771 of 2026

Muhammad Mushtaq and another. **Vs.** Sidra Riaz, etc.

Sr. No. of order/ proceedings	*Date of order/ Proceeding*	*Order with signature of Judge, and that of Parties' counsel, where necessary*
	12.10.2026.	Syed Akhlaq Ahmad, Advocate for petitioners. Respondent No.1 to 3 *ex parte*. M/s Qamar Zaman Qureshi and Barrister Hassan Khalid Ranjha, Additional Advocate Generals Punjab with Mazhar Hussain Tahir, Malik Khalid Tanveer, Rana Athar Raza Khan, Fayyaz Sandhu, Barrister Muhammad Sohail Babar Khan, Barrister Saeed Hussain Nagra, Adnan Safdar Khokhar, Ahmad Kamal Khan, Sh. Faisal Sikandar Iqbal, Muhammad Shahid Malik, Sarmad Ahmad Ghani, Mahar Salman Qutab, Syed Qaiser Gillani, Faisal Anwar Minhas, Ijaz Ahmad, Basit Waheed Watto, Muhammad Naeem Mazhar and Ms. Asifa Ahmad, Advocates. Mr. Qamar Hanif Ramay, Assistant Attorney General for Pakistan, Ch. Imtiaz ullah Warraich, Ch. Muhammad Naseer, Shehryar Farhan Beg, Shujaat Umar Pirzada, Syed Imran Ehsan, Abdullah Haroon, Muhammad Saeed Bin Noman, Dr. Muhammad Azeem Raja, Syed Ali Allow-u-Din, Muhammad Afzal, Mateen ul Haq Ch., M. Haris Jutt, Shafique Ahmad Bhutta, Zahid Saeed and Ms. Mussarat Rehman Advocates. **MUZAMIL AKHTAR SHABIR J:-** In the present case, the petitioners, Muhammad Mushtaq and Jamshaid-ul-Hassan (***'petitioners'***) through this transfer application filed under Section 25-A of the Family Courts Act, 1964 seek transfer of suit for recovery of maintenance allowance and dowry articles titled 'Sidra Riaz etc. versus Jamshaid ul Hassan etc.', filed by respondents No. 1

to 3 through attorney against the petitioners pending in the court of Mr. Nasir Habib, Judge Family Court, Mandi Bahauddin, to any court of competent jurisdiction at Tehsil Burewala, District Vehari, by stating that both the petitioner No.2 and respondent No. 1, who were previously married to each other, are permanent residents of Tehsil Burewala and are presently residing in Italy whereas they never resided in Mandi Bahauddin in their individual capacity or as a married couple during the subsistence of their marriage, therefore, the family suit instituted by Respondent No.1 through special attorney namely Mazhar Iqbal in the aforementioned court, which lacks territorial jurisdiction to entertain the same, is liable to be transferred to Family Court of competent jurisdiction at Tehsil Burewala, District Vehari.

2. The transfer application has been filed by Muhammad Mushtaq, petitioner No.1 for himself and as attorney of his son Jamshaid-ul-Hassan, petitioner No.2, who is residing in Italy. Notices were issued in the matter to the other side but despite service of notices upon the aforementioned special attorney, respondents did not appear before the court, therefore, they are proceeded against ex-parte.

3. Perusal of the record shows that respondent No. 1/Sidra Riaz, through her special attorney namely Mazhar Iqbal, for herself and her minor children Farhad Jamshaid/respondent No. 2 and Faryal Jamshaid/ respondent No. 3 filed suit for recovery of maintenance allowance and dowry articles against the present petitioners, who are her father-in-law and husband, respectively, in the

Family Court at Mandi Bahauddin. Learned counsel for the petitioners states that respondent No. 1 has been permanently residing in Italy. Further contends that the marriage between petitioner No. 2 and respondent No. 1 was solemnized at Burewala, District Vehari, where respondent No. 1 and her parent's family have also been permanently residing and the said respondent was not a resident of Mandi Bahuddin, where suit has been filed. Further states that mere residence of attorney of a party at a particular place cannot, by itself, confer territorial jurisdiction upon a court, otherwise lacking the same merely for the reason that he claims cause of action to have arisen there without mentioning any corresponding facts by merely mentioning in the plaint that he lives within its territorial jurisdiction. Moreover, submits that the present case is not one involving any hardship or inconvenience to the lady / female respondent so as to justify invocation of jurisdiction at a place other than where she actually lives by treating the same as place where she is 'ordinarily residing' as contemplated by law.

4. Heard. Record perused.

5. Perusal of the memorandum of parties of the aforesaid suit for recovery of maintenance allowance and dowry articles shows that the address of the Respondent Nos.1 to 3, who are the plaintiffs of the suit, is mentioned as under:-

> *'1- Sidra Riaz wife, 2- Farhad Jamshaid minor son aged 8 years, 3- Faryal Jamshaid minor daughter aged 4 years caste Arian, residents of Burewala, Tehsil Burewala, District Vehari presently residing in Italy through Special Attorney Mazhar Iqbal son of Haku resident of Choarand Tehsil and District Mandi Bahuddin.'*

Whereas the address of the present petitioners, who were defendants in the said suit, is mentioned as under:-

> *'1- Jamshaid ul Hassan son of Muhammad Mushtaq, 2- Muhammad Mushtaq son of Muhammad Din Caste Arain, residents of Chak No. 493-EB, Burewala, District Vehari.'*

From the perusal of the aforesaid addresses mentioned in the memorandum of the parties it is clear that both the parties are residents of Tehsil Burewala, District Vehari. In the plaint of the suit it is claimed that immediately after marriage, the respondent No. 1 took her husband, the petitioner No. 2 to Italy, where initially they lived together but subsequently the respondent No. 2 left her and started living separately in Italy. In the suit it is not claimed that the plaintiff/respondent ever resided in Mandi Bahuddin and only the address of the attorney is mentioned as Tehsil and District Mandi Bahuddin. However, in paragraph No. 9 of the plaint it is mentioned that the court at Mandi Bahuddin has the jurisdiction to try the suit as the parties are residing within the territorial limits of the said court, without disclosing where they were living or actually lived together during the subsistence of marriage. The petitioners have categorically denied that the parties ever lived in Mandi Bahuddin and along with the instant application computerised copies of Marriage Registration Certificate issued on 27.01.2016 mentioning date of Nikah of the parties as 22.01.2016 and Divorce effectiveness certificate issued 04.10.2024 providing date of divorce as 20.06.2024 and date of its effectiveness as 25.09.2024 both showing address of both parties as

Chak No. 493/E.B., Tehsil Burewala, District Vehari, have been attached which show that the marriage of the parties was solemnized in Burewala and divorce effectiveness certificate was also issued by the Union Council, Ghafoor Wah, Tehsil Burewala. It would not be out of context to mention here at the cost of repetition that despite service of notice issued to the respondent through her attorney, who has filed the aforementioned Family suit, no one has entered appearance of behalf of the respondents to contest this petition and rebut the aforesaid claim of the petitioners and the respondents have been proceeded against *ex parte*. In this view of the matter, this Court has no other option available except to decide this transfer application on the basis of available record.

6. For seeking transfer of suit through the instant transfer application, question of territorial jurisdiction of Family Court at Mandi Bahuddin to entertain said suit has been raised, which has to be considered on the basis of relevant law keeping in view the facts narrated in the plaint. The Supreme Court in *Anne Zahra versus Tahir Ali Khilji and 2 others* (**2001 SCMR 2000**) held that Rule 6 of the West Pakistan Family Courts Rules, 1965, framed under the West Pakistan Family Courts Act, 1964, provides that the Court which shall have jurisdiction to try a suit will be that within the local limits of which the cause of action wholly or in part has arisen or where the parties reside or last resided together, therefore, it was under the provisions of the said rule that the question of territorial jurisdiction of the Family Court was to be decided under the said Act.

7. As the question of territorial jurisdiction of the court is to be decided with reference to Rule 6 of the West Pakistan Family Courts Rules, 1965, for clarity the same is reproduced hereunder:-

> *"6. The Court which shall have jurisdiction to try as suit will be that within the local limits of which –*
>
> *(a) The cause of action wholly or in part has arisen, or*
>
> *(b) Where the parties reside or last resided together*
>
> *Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction."*

8. Perusal of the afore-referred Rule shows that the court within the local limits of which the cause of action had wholly or in part arisen or where the parties reside or last resided together has jurisdiction to try the family suit, however, there is a proviso that in a suit for dissolution of marriage or dower the court within jurisdiction of which wife ordinarily resides also has jurisdiction to try the same.

9. In *Rafiq Ahmad versus Judge Family Court, Khanewal and another* (**1996 CLC 1820**), the expression "ordinarily resides" has been interpreted by this Court in the following terms:--

> *'The expression "ordinarily resides" appearing in Rule 6 of the West Pakistan Family Courts Rules, 1965 means a place where the wife comes to stay at any place of her own choice and this has been enacted for the convenience of the female.'*

10. The import of the said rule also came up for consideration before this Court in *Mst. Shahnaz Kausar v. Muhammad Boota* (**PLD 1982 Lahore**

350) wherein at page 352 it was observed as follows:--

> *'By this proviso the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. It is clear that this has been done for the convenience of female upon whom the law has been bestowed greater care. It would not, therefore, be wrong to attach more weight to the convenience of the female than to the convenience of the male while making order for transfer of cases as well.'*

11. This Court in *Khurram Shehzad versus Additional District Judge, Gujranwala and others* (**2017 MLD 580**) with reference to the aforementioned judgments has explained that the expression "ordinarily resides" as has been interpreted by the courts, does not necessarily mean that the residence should be long in point of time, residence for a few days is enough. The court has to see the place where the female has chosen to stay regardless of whether she is a permanent resident of the place, whether she has property over there or the length of time she has resided there.

12. It is not out of context to mention here that the phrase 'ordinarily resides' mentioned in the proviso to the rule 6 (supra) is an exception which is confined to the wife alone and has not been enacted for the benefit of the husband or any other party to the proceedings of a family suit. Reliance if any required, in addition to aforementioned case laws may be placed on *Zahid Hussain versus Mst. Farhana* (**2019 MLD 720 Sindh**).

13. In the present case, as per the contents of the plaint the wife prior to and even during

subsistence of marriage never resided in Mandi Bahauddin either solely or along with her husband and presently lives in Italy, therefore, the courts at Mandi Bahauddin *prima facie* do not have jurisdiction to try the case. Even in the plaint, it is not mentioned that the respondent No.1 had shifted her residence to Mandi Bahauddin before or after proceeding to Italy, or ordinarily resides in Mandi Bahuddin when she returns to Pakistan. It is pertinent to mention here that the principle of ordinary residence has been made applicable by aforesaid rule to cases were dissolution of marriage or dower is the subject matter of the family suit, none of which is the subject matter of present suit and only claim for recovery of maintenance allowance and dowry articles has been raised without mentioning that how the cause of action wholly or in part has arisen in Mandi Bahuddin, consequently, considering from any angle the Family Court at Mandi Bahauddin lacks jurisdiction to entertain the suit filed by the respondents.

14. It is important to mention here that the principles for determination of territorial jurisdiction of Family Court prior to the aforementioned judgment of the Supreme Court in case of *Anne Zahra* were also discussed in the case titled *Major Muhammad Khalid Karim versus Mst. Saadia Yaqub and others* (**PLD 2012 SC 66**), wherein it has been laid down as under:-

> *'11. Be that as it may, from the ratio of all the law cited above, the legal position, which emerge is as under:--*
>
> *(a) Under section 5 of the Act 1964, the Family Court has the exclusive jurisdiction to entertain, hear and adjudicate (emphasis supplied) all the matters which fall*

within the first schedule to the Act; this admittedly includes the custody and guardianship matter.

(b) For the purposes of determining the 'territorial jurisdiction' of the Family Court, it is Act 1964, and the rules framed thereunder which shall be taken into account and not the provision of the Guardian and Wards Act 1980, even as per force of section 25 of the Act 1964.

(c) According to Rule 6 (a) of the Family Court Rules 1965, there are three factual eventualities which are relevant for the purposes of the determination of the 'territorial jurisdiction' of the Family Court; firstly, where the cause of action wholly or in part has arisen, meaning thereby, in the custody or guardianship disputes if the minors were with the mother and they have been illegally and improperly removed and taken away from the place where they were living with her (or vice versa for father as well), the cause of action shall be said to have arisen at such place, otherwise the cause of action shall be deemed to have arisen where the minors are residing; secondly, under Rule 6(b) where the parties reside or last resided; thirdly as per proviso to Rule 6, in a suit for dissolution of marriage or dower where the wife ordinarily resided. And in view of the addition of proviso to section 7(2) of the Act 1964, which was introduced on 1-10-2002 if in a suit for the dissolution of marriage join other causes of action mentioned in the said proviso, such suit shall also fall in the last category, otherwise not.

12. The petitioner was/and is residing in Multan where the minors are residing with him, who are admitted in the schools there. It is not proved by the respondent that she had brought them to Lahore and was deprived of their custody from Lahore on account of which the cause of action could arise in her favour at Lahore. It is also not established if before parting, the parties hereto were residing at Lahore so as to attract Rule 6(b) ibid.

13. In view of the above, the learned High Court has fallen in error, while relying upon

the judgment reported as Muhammad Iqbal supra; therefore, by allowing this appeal, the impugned judgment of the High Court dated 29-5-2009 is set aside and that of the Family Court and Appellate Court dated 30-5-2006 and 15-2-2008 respectively are upheld.'

15. In view of the principles mentioned in the aforementioned judgments of Supreme Court, unless the respondent No.1 shifts or had shifted her residence to Mandi Bahuddin or claimed that cause of action had wholly or in part arisen there, she could not file the suit in Mandi Bahuddin while taking benefit of Rule 6 (supra). In the paragraph No. 9 of the plaint it has been mentioned that as parties reside within the territorial jurisdiction of Mandi Bahuddin, the court has jurisdiction to try the suit but mere mentioning of said words, without mentioning the address of place where wife 'ordinarily resides' does not confer or shift the jurisdiction to file suit in the courts at Mandi Bahuddin, rather it has to be shown by mentioning relevant facts in the plaint that confer jurisdiction or give rise to cause of action in Mandi Bahuddin. The question of cause of action and jurisdiction of court to entertain suit came up for consideration before the Supreme Court in *Dr. Muhammad Amin versus Zarai Taraqiati Bank Limited through Board of Directors, ZTBL, HO, Islamabad and others* (***2023 SCMR 1083***), wherein it has been held that the expression 'cause of action' means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment, which is always a fundamental element to confer the jurisdiction and enables a party to carry on an action in a court of law being a very significant constituent

required to be incorporated in plaint in terms of Rule 1 of Order VII, C.P.C.

16. It is important to mention here that cause of action is the combined effect of set of facts and legal grounds that give rise to a right in favour of a party to approach a court of competent jurisdiction for redress of grievance. Reliance may be placed on *Bashir Ahmed Badini, D&SJ, Dera Allah Yar and others versus Hon'ble Chairman and Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan and others* (**2022 SCMR 448**), wherein it was held that cause of action is predominantly a technical legal term meant for the set of circumstances and facts which give rise to institute and lodge the claim in the court of law but not any premature claims or grievances. Right to sue originates and is triggered by a wrongdoing. Court cannot hear any case nor render any decision without a valid cause of action or without accrual of right to sue or in other words without accrual of cause of action to set the law into motion. Court of law does not decide the *lis* on mere sentiment, presumption or mere apprehension but the cause of action should be based on a real cause for remedying the wrong into right. Not only should the party seeking relief have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim. The same principles have been reiterated in *Rao Muhammad Rashid and others versus Province of Sindh through Chief Secretary and others* (**2024 SCMR 1864**). Moreover, in *Haji Mitha Khan versus Muhammad Younus and 2 others* (**1991 SCMR 2030**) it has been held that if there is no cause of action, all the other

questions raised in the suit do not arise and the test of cause of action is that if what the plaintiff states in the plaint is taken to be correct does it entitle him to a relief or not in law.

17. Another important aspect of the matter is that the afore-referred suit was filed before the Family Court at Mandi Bahuddin not because the wife i.e. respondent No.1 ordinarily resides in Mandi Bahuddin, rather the same was filed there as the attorney appointed by the respondent No.1 to file and pursue the matter on behalf of the respondents, who were the plaintiffs, is a resident of Mandi Bahuddin and had filed the suit in Mandi Bahuddin for his own convenience whereas the said court was not vested with the territorial jurisdiction to try the said suit. Although a wife may file a suit through an attorney, which procedure is permissible and not barred by law, yet the aforementioned Rule 6 conferring jurisdiction upon a court is only for the benefit of wife, so that a stranded wife can pursue the remedy in the Family Court within the territorial jurisdiction of which she ordinarily resides and where a wife does not permanently or ordinarily reside within territorial jurisdiction of the Family Court and other ingredients such as arising of cause of action conferring jurisdiction upon a Family Court are non-existent, jurisdiction could not vest in the said court merely because the attorney of the wife, who has been authorized to file the suit on her behalf lives within the territorial jurisdiction of the said court for the reason that if such an interpretation is allowed by stretching the meaning of Rule 6, it may give rise to absurd consequences.

18. It is important to note here that jurisdiction can only be conferred upon a court by law and the same cannot be conferred upon a court, which otherwise lacks the same, even by consent of parties, more so at the whims of a litigating party who unilaterally wants to the court to exercise jurisdiction which otherwise does not vest in it. Reliance may be placed on *Karachi Dock Labour Board versus Messrs Quality Builders Ltd.* (**PLD 2016 SC 121**), wherein the court held that parties could not confer jurisdiction upon a court or other judicial or quasi-judicial forum through consent which otherwise in law would have no jurisdiction and the same was the position regarding waiver and acquiescence qua the courts etc. which lacked jurisdiction and such being an inherent defect could not be cured on the rules of consent, waiver, estoppel, acquiesce etc.

19. As in the present case the aforementioned suit had been filed in the court patently lacking any territorial jurisdiction relating to the said suit vested in the said court hence no useful purpose would be served to frame an issue regarding territorial jurisdiction of the court and require parties to lead evidence on the said issue, which would be an exercise in futility keeping in view the facts narrated in the plaint or in the alternate to ask the petitioners to file an application before the said court for return of plaint to be filed before the court of competent jurisdiction for the reason that the same would only consume more time of the parties before the Family Court, which on the basis of what has been stated above, clearly lacks jurisdiction to try the suit.

20. In view thereof, this application is **allowed** with the result that the afore-said suit for recovery of maintenance allowance and dowry articles titled *'Sidra Riaz etc. versus Jamshaid ul Hassan etc.'*, filed by respondents No. 1 to 3 through attorney against the petitioners, shall be withdrawn from the Family Court at Mandi Bahauddin and the same shall be transferred to Family Court at Tehsil Burewala, District Vehari for further proceedings. In order to further regulate the proceedings the matter shall be placed before the District Judge, Vehari, for assigning the same to any court of competent jurisdiction.

(Muzamil Akhtar Shabir)
Judge

Zeeshan Khan

Approved for reporting