

**IN THE LAHORE HIGH COURT,  
BAHAWALPUR BENCH, BAHAWALPUR.**

**ORDER SHEET.**

**JUDICIAL DEPARTMENT**

**C.R. No.224 of 2014**

**Shahzad Ashraf    Versus    Rauf Ahmad**

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of Parties of counsel, where necessary.
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26.01.2017 Mr. Muhammad Aslam Khan Dhukkar, Advocate for the petitioner.  
Mr. Muhammad Imran Pasha, Advocate for the respondent.

This revision petition is directed against the order dated 19.03.2014, penned by learned District Judge, Rahim Yar Khan, allowed application for transfer of suits to one court in order to avoid conflict of judgments.

2. The facts relevant for the disposal of the instant civil revision are, that suit for recovery of Rs.50,00,000/- was filed by respondent under Order XXXVII Rule 2 of The Code of Civil Procedure, 1908 (Hereinafter called The Code) on the basis of cheque No.2839378 of account No.0001046328, U.B.L. pending in the court of learned Additional District Judge, Sadiqabad. The petitioner also filed a suit under Section 39 of The Specific Relief Act for cancellation of cheque No.2839378 of U.B.L. pending in the court of

learned Civil Judge, Sadiqabad. Thereafter, respondent also filed an application before learned District Judge, Rahim Yar Khan, for consolidation of above-mentioned suits and entrustment of the same in one and the same court for further proceedings. Learned District Judge allowed application vide impugned order dated 19.03.2014, on the ground that both the parties are litigating against each other on one disputed cheque.

3. Learned counsel for the petitioner submits that suit filed by the respondent for recovery of money on the basis of cheque issued by the petitioner under Order XXXVII rule 2 of The Code before learned Additional District Judge, whereas the petitioner also filed suit for cancellation of two cheques and two other documents before learned Civil Judge wherefore both the suits were different in nature and could not be consolidated and entrusted to one court. The learned District Judge was not justified to pass such impugned order resulting miscarriage of justice and grave injury to the petitioner, so the same may be set at naught and an appropriate order may be passed for proceedings of each suits separately. Further

submits that the mandate of Order XXXVII Rule 2 of The Code is different from the connotation of cancellation of instrument, so the learned District Judge did not take into consideration and negated the provisions while passing the impugned order whimsically, surreptitiously, fancifully and even without application of judicious mind. Learned counsel seeks help from the dictum laid down in “A.B.L. v KHALID MEHMOOD” (2009 CLC 308).

4. On the other hand, learned counsel for the respondent while defending the order impugned submits that the learned District Judge rightly exercised power as envisaged in The Code of Civil Procedure, 1908 and correctly perceived the situation of the litigation pending between the parties, because there was same cause of action and the same cheque was in dispute, thus, the revision petition may be dismissed maintaining the impugned order. Learned counsel for the respondent has placed reliance on the case of “Messrs FIRST WOMEN BANK LIMITED v REGISTRAR, HIGH COURT OF SINDH, KARACHI and 4 others” (2004 SCMR 108) and “Sh. IQBAL HUSSAIN v ANWAR HUSSAIN” (2005 YLR 181).

5. I have heard learned counsel for the parties and gone through the available record.

6. In order to settle the controversy launched in the instant revision petition, it is appropriate to scan the order passed by the learned District Judge. No doubt, the suit of summary was based upon the same cheque which had been challenged by the respondent in his suit for cancellation of documents i.e. cheque, agreement and compromise deed etc. It was strong likelihood of conflict of judgments coupled with sheer wastage of time. If both the suits were allowed to be proceeded in two different courts, definitely the controversy put forth in both the suits might be aggravated in nature, so, reliance is placed upon "Messrs First Women Bank" (supra) wherein it was held as under:

*"After examining the material on record and going through the impugned judgment we are convinced that the order passed by the High Court is just, fair and equitable on the face of it. It does not suffer from any inherent defect or error of jurisdiction. We are of the view that the trial of both the suits would not only be expedient in the interest of justice but also in the interest of both the parties as joint trial of both the suits would certainly obviate the possibility of a conflict of judgment. In our view apprehensions expressed by the petitioner-Bank's counsel are without any basis and no finding can be given on mere surmises"*

7. So far as the contention raised during the course of arguments by leaned counsel for the petitioner that by virtue of the impugned order either of parties rights' have been prejudiced as in case any appeal or revision arises out of civil suit, the first forum of appeal cannot be availed. I am afraid this contention has no merit in view of the dictum laid down by the Apex Court in "Messrs First Women Bank" (supra), relevant portion of which is reproduced hereunder:

*"Trial of both the suits together would not only be expedient in the interest of justice but also in the interest of both the parties as joint trial of both the suits would obviate the possibility of a conflict of judgments----".*

8. Even otherwise, perusal of the order impugned reveals that the learned District Judge also exercising his administrative powers proceeded on to transfer the case. The said exercise of powers, by any stretch of imagination, cannot be said to be illegal.

9. No illegality has been pointed out in the order impugned.

10. The instant revision petition being devoid of force stands dismissed with no order as to costs.

11. Before parting with the order, it is expected that the learned transferee court will decide the

matter expeditiously, preferably within a period of three months, even if it has to be proceeded on day to day basis.

**(Tariq Iftikhar Ahmad)**  
**Judge.**

**APPROVED FOR REPORTING.**

A.D. Mian\*