

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 21st March, 2014

+ TR.P.(C) 28/2012

MOHIT KUMAR Petitioner

Through Petitioner in person.

versus

HIMALAYAN INSTITUTE HOSPITAL TRUST Respondent

Through Mr. Sanjeev Agarwal with Mr.
Ekansh Agarwal, Advocates.

+ TR.P.(C) 14/2013

MOHIT KUMAR Petitioner

Through Petitioner in person.

versus

M/S QUALITY PRINTERS PVT LTD AND ORS Respondents

Through Mr. Amit S. Chadha, Sr. Advocate
with Mr. Kunal Sinha, Advocate for
defendant Nos.1 & 2.
Mr. Sanjeev Agarwal with Mr.Ekansh
Agarwal, Advocate for the defendant
No.3.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA,J (ORAL)

1. Though both the petitions pertain to different proceedings pending before the Court of Additional District Judge, Tis Hazari and relate to different respondents, the petitioner is common and common submissions have been made by the

petitioner seeking transfer of the two suits pending before the Additional District Judge, Tis Hazari to the Court of Additional District Judge, Saket Courts, New Delhi.

2. The petitions have been filed under Section 24 of the Code of Civil Procedure. In TR.P. (C) 14/2013, costs were imposed on the petitioner vide order dated 7.03.2014 and 20.03.2012. The costs have not been paid. Petitioner, who appears in person, undertakes to pay the costs within one week.
3. The petitioner is advocate by profession. However, the two suits pertain to his personal litigation. In TR.P. (C) 28/2012, the petitioner seeks transfer of a suit filed by the respondents and pending in the Court of Additional District Judge, Tis Hazari to the Court of Additional District Judge, Saket Courts. In TR.P. (C) 14/2013, the petitioner seeks transfer of a suit filed by the petitioner against the respondents which is pending in the Court of Additional District Judge, Tis Hazari to the Court of Additional District Judge, Saket Courts.
4. It is an admitted position that the suits are pending before the Court having competent jurisdiction. On the enhancement of the pecuniary jurisdiction of the High Court, the suits pending in the High Court below the pecuniary jurisdiction were transferred to the District Courts. Originally there was only one District Court where civil suits were tried but subsequently Delhi was divided into nine civil districts. On the setting up of

the District Court Complex in Saket on account of division of Delhi into nine civil districts, the cases pertaining to Land Acquisition Act, Delhi Rent Control Act and Public Premises Act were transferred as per jurisdiction of the different civil courts w.e.f. 1st November, 2008. Pending civil cases were directed to continue to be tried and heard in the Courts already hearing them and/or their successor courts at Tis Hazari, Karkardooma Courts or Rohini Courts.

5. The two suits, subject matter of the transfer petitions, were pending in the Court of Additional District Judge, Tis Hazari and accordingly, in view of the public notice, the said suits continued to be heard and tried by the Court of Additional District Judge, Tis Hazari.
6. The petitioner has contended that the suit property in both the suits is situated at South Delhi within the territorial jurisdiction of the District Court at Saket and the petitioner is a resident of Sarvapriya Vihar, in South Delhi which is at a distance of 8 Km. from Saket Court and 40 Km. from Tis Hazari, it becomes difficult for the petitioner to travel to Tis Hazari Courts on regular basis.
7. The petitioner further contends that the District Court at Tis Hazari is not a convenient court for the petitioner in view of the distance between the residence of the petitioner and Tis Hazari Courts. The petitioner contends that transfer of the suits to

Saket Court would save his time, money and inconvenience. The petitioner further contends that the respondents in TR.P. (C) 28/2012 are not residents of Delhi and the respondents in TR.P. (C) 14/2013 are either residents of out of Delhi or residents of South Delhi and as such, it would be convenient for the parties that the matters are transferred to the District Court at Saket.

8. The petitioner further contends that on behalf of the petitioner, the main witness would be the petitioner and his mother, who are both residents of South Delhi and the documents are at their residence at South Delhi and other official authorities also in South Delhi. The petitioner further contends that keeping in view the convenience of the witnesses who have to appear on behalf of the petitioner, it would be appropriate that the matter is transferred to the District Court at Saket.
9. Learned counsel for the respondents have vehemently opposed the transfer petitions. Learned counsel for the respondents submits that the petitioner is misusing the provisions of Section 24 and has used the Section 24 petition as an abuse of the process of law to keep the suits pending. Learned counsel for the respondents further submits that the petitioner has purposely not taken any step in the progress of the two suits and has tried all means to delay the proceedings. Learned counsel for the respondents further contends that the petitioner has participated in the suits from their inception till the filing of

the proceedings in the two transfer petitions in the year 2012 and 2013 respectively and there is no change in the circumstances, entitling the petitioner to seek transfer of the petitions from Tis Hazari to Saket Courts. Learned Counsel for the respondents further submits that forum conveniens is not convenience of the parties but the convenience of the witnesses and trial of the petitions. Learned counsel for the respondents further contends that no ground has been made out for the purposes of exercising of power under Section 24 of CPC to transfer the petitions.

10. Mr. Sanjeev Agarwal, Advocate appearing for the respondents in TR.P. (C) 28/2012 submits that the suit was filed by the respondents in the year 2005 and the petitioner has sought various amendments and the suit is still at the stage of framing of issues.
11. Learned senior counsel appearing for the respondents in TR.P. (C) 14/2013 has submitted that the petitioner himself is the plaintiff and had filed the suit in the year 2003 and since then the plaintiff has repeatedly sought amendment of the plaint. In the plaint, three times the amendments have been applied for in which twice it has been allowed and once the application was withdrawn. Learned senior counsel for the respondents further submits that since the year 2003, the petitioner by one way or the other has tried to delay the progress of the suit and the present petition has been moved so as to avoid progress in the

suit. Repeatedly, costs have been imposed on the petitioner not only in these proceedings but also in the suit filed by the petitioner and the petitioner is trying his level best to protract the litigation.

12. The petitioner has denied the allegations that the petitioner is trying to delay the progress of the suit. The petitioner has submitted that the petitioner has taken legal steps and in case any costs has been imposed on the petitioner, the petitioner has paid the same and since the costs has been paid, the orders cannot be taken into account and the petitioner cannot be held to be liable any further for causing delay.
13. Section 24 of the Code of Civil Procedure deals with the general power of transfer and withdrawal of the High Court or of the District Court. The High Court is empowered under Section 24 to transfer any suit, appeal or proceedings pending before it for trial or disposal to any court subordinate to it or withdraw any suit, appeal or proceedings pending in any court subordinate to it or transfer the same for trial or disposal to any other court subordinate to the High Court.
14. The admitted position is that the two suits that are pending at Tis Hazari and Tis Hazari Courts are the courts of competent jurisdiction. The argument of the petitioner that it is less convenient for the petitioner to travel to Tis Hazari in comparison to the convenience that is there for him to travel to

the courts at Saket and further that it saves time, money and inconvenience to the petitioner is without any merit. The petitioner is a young advocate practising in Delhi. The petitioner submits that the petitioner practices in the High Court of Delhi as well as Patiala House Courts and has personal litigations outside Delhi as well for which the petitioner travels out of Delhi. The petitioner admits that he takes matters on behalf of his clients and carries on the profession of law.

15. The principle of forum non-conveniens is a matter of equity and the court has to consider that in case a particular forum is non-conveniens for the purposes of trial, the court can transfer proceedings from one court to the other of equally competent jurisdiction. The principle of forum non-conveniens is applied even in case where there are courts of concurrent competent jurisdiction.
16. The mere convenience of the parties or any one of them may not be enough for exercise of the powers, but it must also be shown that the trial in the chosen forum will result in denial of justice. In the matter of transfer of the case from one court to another the main consideration is failure of justice and, therefore, a case is to be made out that the party has a reasonable apprehension that justice will be denied to him.
17. The argument of the petitioner that the petitioner has to travel

40 kms. as compared to a distance of only 8 Kms, if the case were to remain at Tis Hazari, holds no water. The petitioner himself travels for work. If the arguments of the petitioner were to be accepted then every other litigants would be entitled to file petitions under Section 24 and contend that the matter be transferred as per their convenience. The petitioner today is a resident of South Delhi. In case, the petitioner shifts his residence to North Delhi then the petitioner would again seek transfer of the matter from Saket to Tis Hazari. This kind of argument on convenience of the parties cannot be entertained as a valid ground for transfer of a case under Section 24. The mere convenience of one of the parties and, more so, a young person, who is a practicing advocate cannot be a ground for entertaining a petition under Section 24. Neither any case has been made out nor any submission made that continuance of the cases at Tis Hazari would lead to denial of justice.

18. Further argument of the petitioner that having paid costs the petitioner cannot be penalised again also holds no water in the facts of the present case. Merely because the petitioner has paid costs does not mean that the order noting delay caused by the petitioner loses its relevance. The fact that the petitioner caused the delay is evident from the fact that the costs are imposed. Even in the present petition record reveal that repeated adjournments were taken by the petitioner to address arguments. Twice costs were imposed by this court in one of

the two petitions to secure presence of the petitioner so that petitioner could make submissions in the court.

19. The submission of the petitioner that the convenience of the witnesses of the petitioner i.e. the petitioner himself and his mother, who is stated to be aged about 77 years should be also taken into account, does not have any legs to stand on inasmuch as there are provisions of CPC that take care of a situation where a witness cannot travel to Court. In case, if a person is unable to travel to Tis Hazari, a party can always apply for appointment of a commissioner for recording of evidence of the witnesses who cannot travel to Court. Furthermore, no circumstances have been pointed out justifying the transfer of the two suits.
20. The petitioner has relied on the decision of this Court dated 31.08.2010 in CM(M) 930/2009 to contend that the petitioner was held to be not responsible for the delay in disposing of the revision petition as it was the society/respondent in TR.P.(C) 28/2012, which was responsible for the delay in the progress of the petition. The suits have remained pending for 10 years and 14 years respectively. The present transfer petitions have been filed clearly without any merit and with the clear intention of delaying the progress of the suits. The observations in order dated 31.08.2010 are not relevant for the present petition.
21. Learned counsel for the petitioner has relied upon the decision

in the case of *Ambika Industries vs. Commission of Central Excise*, 2007 (6) SCC 769 to contend that it is inconceivable under the Code of Civil Procedure that jurisdiction of the District Court would be exercisable beyond the territorial jurisdiction of the District, save and except in such matters where the law specifically provides therefor. The said judgment is not applicable in the facts of the case. The notification directing that the civil suits already pending as on 22.10.2008, shall continue to remain to be tried and heard in the courts at Tis Hazari Courts, Karkardooma Courts or Rohini Courts, as the case may be is clearly applicable to the suits subject matter of the present petitions. The petitioner contends that he has challenged the notification dated 22.10.2008 by way of a writ petition. The petitioner further submits that the writ petition has not yet been listed. Since there is no stay or suspension of the notification, it is applicable as on date.

22. The petitioner has further relied on the judgment in the case of *Lakshmi Narain vs. First Addl. Dist. Judge*, AIR 1964 SCC 489 to contend that the High Court could not have transferred the appeals to be heard by the District Court inasmuch as Section 24 postulates that the court to which the suit or appeal or other proceeding is transferred should be competent to try or dispose of the same. The said judgment is also not applicable in the facts of the case inasmuch as there is no dispute that the courts at Tis Hazari are the court of competent jurisdiction and

further in the said judgment, the High Court had transferred the proceedings which only the High court was competent to hear to the court of district judge. In those circumstances, the said decision was rendered.

23. I find no merit in the two transfer petitions. The petitions are accordingly dismissed.
24. It is noticed that the proceedings in both the suits have been substantially delayed. One of the suits after a lapse of 14 years has not even reached the stage of completion of pleadings and the other, after a lapse of 10 years, has barely reached the stage of framing of issues.
25. In view of the facts and circumstances of the case, the trial courts in both the matters are directed to dispose of the suits preferably within a period of six months.

SANJEEV SACHDEVA, J

MARCH 21, 2014
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