

Court No. - 17**Case :-** CIVIL REVISION No. - 76 of 2023**Revisionist :-** Jayendra Pratap Singh Thru. His Attorney Prem Shanker Tiwari**Opposite Party :-** Sunil Kumar Chaudhary And 9 Others**Counsel for Revisionist :-** Sridhar Awasthi**Counsel for Opposite Party :-** Lokendra Kumar Gupta**Hon'ble Alok Mathur,J.**

1. Heard Shri Sudeep Seth, learned Senior Counsel assisted by Shri Sridhar Awasthi, learned counsel for revisionist, Shri Lokendra Kumar Gupta, learned counsel for respondents and perused the record.
2. The revisionist is aggrieved by order dated 16.10.2023 passed by learned District Judge, Lucknow in Misc. Case No. 592 of 2023 (Jayendra Prapat Singh Vs. Sunil Kumar Chaudhary and others) under Section 24 of C.P.C. thereby rejecting the application of revisionist for transfer of Civil Suit No. 678 of 2022 (Jayendra Pratap Singh Vs. Sunil Kumar Chaudhary and others) from the court of Civil Judge, (Senior Division), Malihabad, Lucknow to some other court of competent jurisdiction.
3. Learned counsel for revisionist has submitted that suit for permanent injunction was filed by the revisionist against the respondents for restraining them to create obstruction in the peaceful possession of the disputed property. Along with suit for permanent injunction an application for temporary injunction was also filed by the revisionist under Order 39, Rule 1 and 2 of C.P.C., which was duly considered by the court of Civil Judge, (Senior Division), Malihabad Lucknow and an order was passed in favour of the petitioner on 12.4.2022. Subsequently, the opposite parties/defendants put in appearance and moved an application for vacation of temporary injunction granted in favour of the plaintiffs-revisionist and the matter is pending at the stage of deciding the application preferred by the

opposite parties. Considering the fact that the matter is pending for a substantial period of time, the opposite parties had approached this Court seeking early disposal of their application by means of a Writ Petition bearing No. 2934 of 2022 under Article 227 of the Constitution of India and this Court was of the view that the application is premature but proceeded to direct the court to decide the application filed by the opposite parties on the date fixed or within next six weeks in accordance with law. In pursuance to the direction of this Court, the trial court is listing the case regularly and indisputably the hearing is taking place. It is in this fact, an application under Section 24 of C.P.C. was moved by the revisionist before the District Judge, Lucknow stating therein that the file of the matter is being heard by the concerned court and the paper book is kept in personal custody of the Presiding Officer and that the plaintiff has been informed through certain sources that the matter would be decided in favour of the defendants/opposite parties.

4. It is on the basis of the aforesaid facts, an application for transfer of the case was moved and on the said application, the comments of the Presiding Officer was also obtained and the District Judge, Lucknow after considering the aforesaid facts, has rejected the application for transfer. The other relevant fact in the present case is that the Presiding Officer, in the meanwhile, was transferred on 28.4.2023 to the court of Civil Judge (Senior Division) Lucknow and after expiry of mere one month, he has been posted back to the court of Civil Judge (Senior Division), Malihabad, Lucknow on 24.5.2023. The District Judge, Lucknow, while rejecting the application, has relied upon the comments received from the Presiding Officer that the delay in disposal of the application C-6 appears to have been due to the transfer of Presiding Officer and, in the meanwhile, it was further considered that the Presiding Officer has passed an ex-parte injunction in favour of the applicant and no case of bias was made out and accordingly the application for transfer was rejected.

5. Learned counsel for revisionists has submitted that the revisionist has lost its faith in the court because the matter is being prolonged by the Presiding Officer and the matter is fixed for hearing repeatedly but the same has not been concluded. He further submitted that it was informed to the learned District Judge that according to the revisionist, they have received information that the matter is likely to be decided against the revisionist in favour of the respondents.

6. The revision has been opposed by learned counsel for respondents and it has been submitted that the allegations against the Presiding Officer are absolutely baseless and there is no material at all in support of the said allegations and merely on the request of any of the party, the case cannot be transferred from one court to another. It is further submitted that it has to be demonstrated that apprehension of bias is real and apparent and only then can a person succeed in moving an application under Section 24 of C.P.C.

7. I have heard learned counsel for parties and perused the record.

8. The revisionist has instituted a suit for permanent injunction against the opposite parties along with an application for temporary injunction, which was duly considered by the trial court and temporary injunction was granted in favour of the revisionist. The opposite parties/defendants had put in appearance and moved an application for vacation of temporary injunction granted in favour of the revisionist. The trial court was hearing the said application for vacation of temporary injunction when an application for transfer of the said application was moved before the District Judge, Lucknow. One relevant fact in the present case is also that the writ petition was filed by opposite parties for expeditious disposal of application and this Court directed the trial court to decide the same within a period of six weeks by means of order dated 29.8.2022. There is no dispute with regard to the fact that subsequent to the order passed by this Court, the trial court has proceeded to hear the matter regularly but the argument has not been concluded and the matter is still being heard by the trial court. The other relevant factor to be taken into account is that during

the said period the Presiding Officer was transferred and after a period of one month, he was again given the charge of Civil Judge (Senior Division) Malihabad, Lucknow and he has again commenced hearing. It is being alleged by the learned counsel for revisionist that merely because the matter is being heard for a number of dates and the matter has not been concluded, the revisionist feels that the Presiding Officer is biased. The other grounds raised by the revisionist and as per knowledge derived by the revisionist himself he has come to know that the fate of the suit would be decided against the revisionist in favour of the opposite parties.

9. This Court is of the view after hearing the parties that the grounds on which the application for transfer under Section 24 of C.P.C. has to be decided has been considered by Apex Court in the case of ***Maneka Sanjay Gandhi Vs. Rani Jethmalani (1979) 4 SCC 167*** and has observed as under:-

"Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case.

10. In the case of ***Subramaniam Swamy (Dr.) v. Ramakrishna Hedge (1990) 1 SCC 4***, the Apex Court has held as under:-

"Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme

Court and is of wide amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice-have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone."

11. Applying the principle enshrined by the Apex Court, in the facts of the present case, it has to be fully demonstrated that there is real and substantial apprehension in the mind of the applicant that he would not get justice from the court. In support of the contention, it was stated that the case has been listed on various dates but has not been concluded. This Court is of the considered view that mere because the

matter has been heard on various dates at length cannot by itself demonstrate any bias in the mind of the Presiding Officer. Secondly, without there being any substantial material to show that the knowledge derived by the revisionist that the case would be decided against him is without any basis of substance. There is no mention as to what is the source of information and as to whether the source leads to the Presiding Officer. The case cannot be transferred from one court to another merely on the basis of the apprehension and unsubstantial allegations. The allegations have to be real and substantial so as to indicate the bias in the mind of the Presiding Officer for exercising power under Section 24 of C.P.C.

12. Considering the aforesaid facts in light of the law enshrined by Apex Court in the aforesaid cases, this Court is of the considered view that no such facts exists in the present case and grounds raised by the revisionist are not substantial in itself for transfer of the case to another court.

13. Considering the fact that there is already a direction of this Court to decide the application preferred by the opposite parties, it is expected that the order of this Court would be complied with the letters and spirit and the proceedings should be culminated with expedition in accordance with law.

14. Subject to aforesaid observations, the revision being devoid of merits and is dismissed.

15. The Presiding Officer has to consider and decide the case without any prejudice by the application preferred by the revisionist for transfer of the procedure.

(Alok Mathur, J.)

Order Date :- 2.11.2023

Virendra