

Court No. - 8

Case :- WRIT - B No. - 771 of 2024

Petitioner :- Bhanu Pratap Verma

Respondent :- District Deputy Director Of Consolidation / District Magistrate, Bahraich And Others

Counsel for Petitioner :- Rajeiu Kumar Tripathi

Counsel for Respondent :- C.S.C.,Devraj Singh,Shashwat Srivastava,Uma Shankar Sahai

Hon'ble Jaspreet Singh,J.

1. Heard Shri Rajeiu Kumar Tripathi, learned counsel for the petitioner, Shri U. S. Sahai, learned counsel for the private respondent and the learned Standing Counsel for the State-respondents.

2. By means of the instant petition, the petitioner assails the order dated 16.07.2024 passed by the District Deputy Director of Consolidation, Bahraich whereby the application for transfer filed under Rule 65(1-A) of the U.P. Consolidation of Holdings Rules, 1954 has been dismissed.

3. Submission of the learned counsel for the petitioner is that respondent no.3 while considering the petition before him by his acts and manner has given an apprehension that the petitioner would not get justice from the said court and for the said reason the petitioner had moved an application for transfer which has been rejected on the ground that even earlier the petitioner had moved a transfer application which was rejected and the petitioner is attempting to delay the proceedings by making repeated applications.

4. It is urged that in the transfer application, a copy of which has been brought on record as annexure no.8, it was stated that a request for oral adjournment was made before the court concerned which was not allowed by the court where after request in writing was made for postponement of the hearing which was also not accepted by the court and in such circumstances

the transfer application was moved. The petitioner had also filed a supplementary-affidavit bringing on record the earlier application for transfer moved by the petitioner as well as its order and the same is taken on record.

5. It has also been urged by the counsel for the petitioner that there are several petitions pending between the parties and as such it will be appropriate if all the matters are heard by the District Deputy Director of Consolidation/District Magistrate Bahraich himself rather than the court of Deputy Director of Consolidation against whom the transfer application was moved.

6. Learned counsel for the private respondent has submitted that no party can claim to get the matter decided from any one particular court. It is thus urged that the petitioner is in the habit of making repeated applications only to delay the proceedings and in such circumstances the transfer application which has been rejected does not suffer from any error which may persuade this Court to entertain the present application which is otherwise liable to be rejected.

7. The Court has considered the rival submissions and also perused the material on record.

8. It will be noticed that in so far as the transfer application is concerned, it is alleged that the court concerned had passed an order directing the parties to maintain status quo. The matter was fixed for hearing on the application for recall of the order granting the interim order and on the given date the senior counsel for the petitioner was out of station and his junior had made a oral request for an adjournment which was not accepted nor the court was inclined to grant any time and despite a written application moved but it was not accepted.

9. It is alleged that the Court remarked that he had heard the submission of the other parties and appropriate order would be passed. It has also been stated in the application that the private respondent had openly claimed that he had an

understanding with the Presiding Officer who has assured that the interim order would be vacated and the mannerism of the Presiding Officer is such that it created a doubt in the mind of the petitioner that he shall not get justice from the said court.

10. This Court has perused the said application and finds that the allegations are completely bald, vague and the said application apparently as brought before this Court does not appear to be supported by an affidavit. Even otherwise, if the application annexure no.8 is compared with the application earlier moved by the petitioner dated 12.01.2024 which has been brought on record as annexure no.S.A.1, it would indicate that similar allegations were levelled against the then Presiding Officer. The earlier application was rejected on account of the fact that the allegations which was levelled against the Presiding Officer since he had been transferred, hence the said application became redundant but the fact remains that the averments made in the said application that the respondent had openly announced that they had an understanding that the Presiding Officer that the interim order shall be vacated is almost identical which has been incorporated in the present application for transfer which has been rejected.

11. In the aforesaid backdrop, if the order passed by the District Deputy Director of Consolidation, Bahraich is seen it will reveal that the Court has rejected the application noticing that even earlier similar allegations were levelled and moreover there was nothing to support the allegation.

12. At this juncture, it will be appropriate to notice a decision of this Court in ***Rajesh Kumar Vs. Addl. Director of Consolidation, Lucknow & others, Writ-B No.705 of 2024 decided on 10.07.2024*** whereby this Court by relying upon the earlier decision on that it is very easy to raise allegation against the court and the manner in which they are so raised and that too casual without any specifics, it cannot be permitted to allow such application as that would have demoralizing effect on the Presiding Officer. The

Court in *Rajesh Kumar (supra)* had considered the earlier decision of this Court in ***Vinod Kumar Singh Vs. Board of Revenue U.P. Lko. Thru. its Chairman and 3 others; 2022:AHC-LKO:66114*** had noticed the earlier decision on the said point and held as under:-

"This Court is reminded of two decisions rendered by this Court in the cases of Raja Ram and others Vs. Ashok Kumar and others; 2014 SCC Online ALL 15845 and Ram Prakash Vs. District Judge, Ballia and others; 2014 SCC Online ALL 15491, wherein the issue of transfer has been considered and it has also been noticed that acting upon mere allegations without any material particulars and substantiated material would cause deleterious effect on the administration of justice. In the case of Raja Ram and others (Supra) this Court in paragraphs 7 and 9 has held as under:

"7. Mere presumptions or possible apprehensions are not sufficient therefor ; only good and sufficient grounds, clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice.

9. Thus, The power vested in the High Court under Section 24 C.P.C. is comprehensive and discretionary. The discretion to be exercised, as we all know, is a judicial discretion based on sound reasonings. While considering the question of transfer, the very bias which has to be law laid down for transfer of the same is to be considered and in the present case, the reason that opposite party no.2 is a practicing lawyer cannot be a ground for transfer when there is no concurrent reason that the said person in any manner may influence the proceedings of the matter and if on the said ground, the case is transferred then it is practically himself to get influence against the practitioner lawyer in a particular district as transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice."

Further, in the case of Ram Prakash (Supra) this court has observed in paras 5 to 12 as under:

"5. The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved proved/

substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer. In *Smt. Sudha Sharma (supra)* the Court observed that it is the duty of learned counsel to draft the application and made allegations with utmost care and caution. Hon'ble B.M. Lal, J. (as His Lordship then was), said:

"9. ...a foremost duty casts upon the counsel concerned while drafting and making allegations in the transfer petition against the Judge concerned with utmost care and caution, particularly in making wild allegations against the Presiding Judge. But, it appears that now-a-days it has become common feature to make allegations against the Court Presiding Judge. The counsel should realise that they are also officers of the Court. Introducing fanciful and imaginary allegations as grounds for transfer and harbouring apprehension such grounds that fair and impartial justice would not be done should always be deprecated.

10. Nonetheless, it is also important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to create and maintain such confidence and atmosphere by giving every litigant an assurance by their judicial conduct that fair and impartial justice will be imparted. It is necessary to create such a confidence in the mind of the litigants so that their faith may not be shaken in Courts of law."

6. Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. (*Rajkot Cancer Society Vs. Municipal Corporation, Rajkot*, AIR 1988 Gujarat 63; *Pasupala Fakruddin and Anr. Vs. Jamila Mosque and anr.*, AIR 2003 AP 448; and, *Nandini Chatterjee Vs. Arup Hafi Chatterjee*, AIR 2001 Calcutta 26)

7. Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer.

8. In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict

and cautious to find out whether the allegations are bona fide, and, if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the courts of law but also to protect judicial officers and maintain their self esteem, confidence and above all the majesty of institution of justice.

9. The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in Country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums, like, Nyaya Panchayats, Village Courts and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have, in regular established Courts, is yet to be developed in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute subordinate judiciary, namely, the District Court; the High Courts and the Apex Court.

10. The hierarchy gives appellate and supervisory powers in various ways. The administrative control of subordinate judiciary has been conferred upon High Court, which is the highest Court at provincial level and is under constitutional obligation to see effective functioning of subordinate Courts by virtue of power conferred by Article 235 read with 227 of the Constitution. No such similar power like Article 235, in respect to High Court is exercisable by Apex Court, though it is the highest Court of land. Its judgments are binding on all. Every order and judgment of any Court or Tribunal etc., in the Country, is subject to judicial review by Apex Court. This is the power on judicial side.

11. In Ajay Kumar Pandey, Advocate, In Re:, (1998) 7 SCC 248, the Court said that superior Courts, i.e. High Court as also the Apex Court is bound to protect the Judges of subordinate Courts from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the

authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.

12. If there is a deliberate attempt to scandalize a judicial Officer of subordinate Court, it is bound to shake confidence of the litigating public in the system and has to be tackled strictly. The damage is caused not only to the reputation of the concerned Judge, but, also to the fair name of judiciary. Veiled threats, abrasive behaviour, use of disrespectful language, and, at times, blatant condemnatory attacks, like the present one, are often designedly employed with a view to tame a Judge into submission to secure a desired order. The foundation of our system is based on the independence and impartiality of the men having responsibility to impart justice i.e. Judicial Officers. If their confidence, impartiality and reputation is shaken, it is bound to affect the very independence of judiciary. Any person, if allowed to make disparaging and derogatory remarks against a Judicial Officer, with impunity, is bound to result in breaking down the majesty of justice."

13. This aspect was also considered by a coordinate Bench of this Court in **Aliyari vs Ranjana And 5 Others ; 2024:AHC;56817** passed in Civil Revision Defective no.15 of 2024 wherein the Court has held as under:-

"This Court is of opinion that the allegations on which the transfer has been sought are reflective of a tendency amongst members of the citizens, where they consider the authority and the moral uprightness of the Courts in poor light because they might have experiences of that kind in other walks of life. In doing that, they do much harm to the justice dispensation system. This kind of a tendency of hurling allegations at Courts without the slightest fear of the outcome, if the allegations fail or are found to be made on hollow ground, must be put down with a heavy hand in the larger interest of administration of justice. This Court is, therefore, of opinion that not only this writ petition must be rejected, but done so with costs of Rs. 20,000/-, payable by the revisionist."

14. In light of the above the casual utterances which have been made in the transfer application without a cogent ground and material to justify it

hence in the circumstances this court does not appreciate it and for the aforesaid reasons this Court does not find that there is any merit in the petition which is accordingly **dismissed** on a cost of Rs.2500/- to be deposited before the Conciliation & Meditation Centre of this Court within a period of two weeks from today.

Order Date :- 7.8.2024

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