

Party Name : RAJU DEB Vs DULAN BHATTACHARJEE

THE HONBLE MR JUSTICE U. B. SAHA

The instant application is filed by the petitioner for transferring the Money Suit No. 07 of 2014 from the court of the learned Civil Judge, Senior Division, Dharmanagar, North Tripura to the court of learned Civil Judge, Senior Division, West Tripura, Agartala.

Heard Mr. D. C. Roy, learned counsel for the petitioner as well as Mr. P.R. Barman, learned counsel appearing for the respondent.

The main contention of the petitioner for transferring the aforesaid suit is that his mother aged about 65 years has been suffering from cancer and undergoing treatment at Regional Cancer Centre, Agartala and he has also filed one criminal case being C.R. No. 336 of 2014 as well as one money suit being M.S. No. 47 of 2014 against the respondent before the respective court at Agartala.

The respondent by way of filing affidavit in opposition submits that suffering of the mother of the petitioner from cancer does not ipso facto make the petitioner entitled to get the aforesaid money suit transferred from the Court of the Civil Judge, Senior Division, Dharmanagar, North Tripura to the court of the Civil Judge, Senior Division, West Tripura, Agartala. It is also stated that in a civil suit, it is not necessary for the petitioner to be present each and every day before the learned trial court as a defendant. He has only to appear at the time of recording of evidence. It is also stated that the respondent being plaintiff is entitled to institute his suit in any forum which the law permits. In the instant case also, the respondent being the plaintiff filed the suit before the learned Civil Judge, Senior Division at Dharmanagar being that court has the jurisdiction. It is further stated that the principle governing the general power of transfer and withdrawal of the case under Section 24 of the Code is that the court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience and inconvenience itself is not a ground for transferring a case from one court to another court.

Mr. Roy, learned counsel while urging for relief sought for would contend that as the petitioner has also filed one criminal and one civil case against the respondent before the respective court, Agartala, therefore, it would not be inconvenient for the respondent to appear before the court at Agartala after transferring the suit in question.

On the other hand, Mr. P. Roy Barman, learned counsel for the respondent submits that the court should not lightly change that forum and compel a justice seeker to go to another court with consequent increase in inconvenience and expense of prosecuting his suit.

He has also placed reliance on a judgment of the Apex Court in **Indian Overseas Bank, Madras V. Chemical Construction Co. & ors, AIR 1979 SC 1514** wherein the Apex Court considered the principle governing the general power of transfer and withdrawal under Section 24 of the Code and held that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go another Court, with consequent increase in inconvenience and expense of prosecuting his suit.

In the instant case, if the prayer for transfer of the suit in question is allowed, then the respondent, plaintiff in the suit, would face inconvenience and hardship. More so, the ailments of the mother of the petitioner cannot be a ground for transfer of the suit as sought for.

This court has gone through the contention made by the parties as well as the decision of the Apex Court in **Indian Overseas Bank, Madras** (supra). According to this Court, this is not a fit case where the prayer for transfer can be allowed. Accordingly, the prayer for transfer is rejected. In the result, the instant petition is dismissed.