

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 4777 of 2008 (O&M)

Date of decision: 03.09.2015

A.P.S. Shergil and another

... Petitioners

versus

Kuldip Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.P.S. Shergill, petitioner No.1, In person.

K.Kannan, J.

The revision is filed against the order passed by the District Judge withdrawing the case pending before the Civil Judge Junior Division, Jalandhar to yet another Judge under his jurisdiction through an order passed on 05.03.2008 and directing the parties to appear on 12.03.2008. The impugned order also states that transferee Judge will endeavour to decide the suit within a period of two months.

The plaintiffs are aggrieved by this order of transfer and are in revision before this Court. The petitioner who is a party in person and who is also incidentally a legal professional points out to me that on an earlier date on 14.02.2008, the defendant witness was present and examination-in-chief by way of an affidavit had been filed. The Court observed that the case had been pending for 7 years and he had passed the detailed order while entertaining written statement filed belatedly. He

had informed the parties that the evidence will be concluded on that date but it could not be completed and the Court directed that the cost of Rs. 2,000/- shall be paid by the defendant to the opposite party and Rs.1000/- to the free Legal Aid Society. The Court directed the amount to be paid within 7 days and posted it to 05.03.2008 for concluding the evidence.

It would appear that apart from the above order what was passed, the Court also stated on the administrative side that he was making an request to the District Judge to transfer the case for personal reasons that he did wish to try the case. The District Judge, therefore, passed on an order on 05.03.2008 which is impugned now.

The petitioner contends that when the District Judge was transferring the case on 05.03.2008, no notice was given to the plaintiffs only the defendant with his counsel were present. The petitioner points out with reference to Section 24 CPC that the High Court and the District Court have powers of transfer of the case after notice to the parties and in this case no notice have been given. According to him, it was a serious error in procedure. The Section reads thus:-

On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in

any Court subordinate to it, and-

- (i) try or dispose of the same; or
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
- (iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

The Section contemplates two situations for either a High Court or District Court in the manner of dealing with a transfer petition. If an application for transfer is made, the Court could pass an order only after notice to parties and after hearing such of them has decided to be heard. If the District Judge was passing an order on his own motion it could be even without such notice. 'On its motion' must be understood as any situation where no application had been made by the parties. A note which a Presiding Judge may write on the administrative side seeking to be rescued on personal grounds must be taken as an information available to the District Judge essentially and after he passed an order of transfer it must be taken as an order passed 'on its own motion' and not be seen through the first portion of the Section which deals with the power of the court to transfer on application after notice. The want of notice to the plaintiff cannot therefore be seen as erroneous.

Assuming that no case could have been transferred without such notice, the plaintiffs have availed to themselves the opportunity before me to complain that the case ought not to be transferred. From the year 2008 to 2015 we have let go another precious 7 years to be wasted. I

cannot even believe therefore that the same Presiding Officer who had passed the order on 14.02.2008 is present in that Division. If the case was ordered to be transferred to yet another Judge, by sheer change of circumstances and length of time, there must be another Judge to hear the case. First of all, it will be obnoxious for any counsel for party to believe that he will have an audience before a particular Judge. No such preferences shall ever be shown unless a Presiding Officer stated that he would not want to hear a case for personal reasons. It ought not to be a case for complaint by any litigant. For sheer purity of administration, it shall be a matter that shall be dealt only by the superior officer namely, the District Judge and if he exercises that power and directs a transfer to be made, the matter must rest there.

The civil revision is a vexatious exercise and is dismissed as such.

(K.KANNAN)
JUDGE

03.09.2015

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