

\$~19

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 4th November, 2015

TR.P.(C) 55/2015

NEETU SINGH & ANR

..... Petitioners

Through: Ms.Geeta Luthra, Sr. Advocate with
Ms.Shreya Singh, Mr.Imran Ahmad
& Mr.Kumar Sushobhan, Advocates

versus

RAJEEV SAUMITRA

..... Respondent

Through: Mr.P.V.Kapur, Sr. Advocate with
Mr.Rahul Kumar & Mr.V.K.Nagrath,
Advocates

PRATIBHA RANI, J. (Oral)

TR.P.(C) 55/2015

1. The petitioners have invoked the jurisdiction of this Court under Section 24 of the Code of Civil Procedure with a prayer that Suit No.217/2015 pending before the learned ADJ-02, North be transferred to any other Court of competent jurisdiction as petitioners do not expect fair trial from the said Court.
2. Along with the petition the affidavits of the petitioner No.1 as well of Mr.Kumar Sushobhan, Advocate have been annexed in support of grounds on which the transfer has been sought from the Court of learned ADJ-02, North.
3. Notice of the transfer petition was sent to the respondent.
4. Ms.Geeta Luthra, learned senior counsel for the petitioners has submitted that the manner in which the learned ADJ-02, North has treated

the petitioners and their counsel has caused reasonable apprehension in the mind of the petitioners that they would not get a fair trial from that Court. Ms.Geeta Luthra, learned senior advocate has submitted that not only threat was extended by learned ADJ-02, North but also when the petitioner tried to show a judgment of this Court on the issue relating to Order II Rule 2 CPC, the comments made by learned ADJ-02, North was that “Yeh judgment high Court ko hi dikhana” and further threatened petitioner No.1 in the open Court that “you may face the dire consequences either jail or your property would be attached in contempt”.

5. Mr.P.V.Kapur, learned senior counsel for the respondent submitted that the petitioners have sought transfer of this case from the Court of learned ADJ-02, North apprehending action in contempt petition. It has been further submitted that if matters are transferred from one Court to another on the basis of allegations made by a litigant and concerned judge is left undefended to answer the allegations made in the transfer petition it is likely to have demoralising effect on the judicial officers. Learned senior counsel for the respondent further submitted that to discourage such type of litigants, the transfer petition may not be allowed.

6. When the transfer petition was filed levelling allegations against learned ADJ-02, North, this Court directed the Registry to send the copy of annexure P-7 (affidavit of Kumar Sushobhan, Advocate) and annexure P-8 (affidavit of petitioner No.1 Neetu Singh) to obtain comments from the learned Presiding Officer. Report has been received from the learned ADJ-02, North. In his report dated 8th September, 2015 the learned ADJ-02, North has given the following details:-

(i) A Civil Suit no.78/2015 for declaration, rendition of account and permanent injunction titled as “Rajeev Saumitra Vs. Neetu Singh &

Anr.” was assigned to that Court on 24th March, 2015 for which notice was sent to the opposite party for 22nd April, 2015.

(ii) On 22nd April, 2015 none appeared on behalf of the defendants (petitioners before this Court) despite service. However, instead of proceeding ex-parte against the defendants, the matter was fixed for 7th May, 2015 for appearance of the petitioners/defendants.

(iii) On 7th May, 2015 proxy counsel appeared on behalf of the petitioners/defendants filed his vakalatnama but as the learned ADJ-02, North was attending the training programme the case was adjourned to 16th July, 2015.

(iv) On 16th July, 2015 objections raised by the learned counsel for the plaintiff that the WS and reply to the injunction application have been filed beyond limitation and cannot be taken on record was considered and the delay in filing the written statement and reply to the injunction application was considered by learned ADJ-02, North.

(v) Vide order dated 17th July, 2015 the injunction application was allowed and injunction order was issued against petitioners/defendants.

(vi) The application under Order XXXIX Rule 2-A CPC was filed by the respondent/plaintiff of which notice was sent to the petitioners/defendants with direction to the defendants to appear in person and for reply and arguments on the contempt application. Since the learned ADJ-02, North was informed about the revision petition being preferred by the petitioners/defendants, the matter was adjourned.

(vii) The petitioners/defendants did not appear in person despite direction and the learned ADJ-02, North was communicated about the verbal order by the High Court not to press the contempt application till 11th August, 2015.

(viii) On 17th August, 2015 an application under Order XXIII Rule 3 CPC read with Section 151 CPC for withdrawal of the suit with liberty to file a fresh suit was filed along with the copy of the order passed in FAO No.244/2015 & CM No.14054/2015 titled as “Neetu Singh Vs.Rajeev Saumitra”.

(ix) A fresh Civil Suit No.217/2015 for declaration, rendition of accounts, permanent injunction and for damages along with injunction application and caveat petition titled as “Rajeev Saumitra Vs. Neetu Singh” was filed. This suit was also assigned to learned ADJ-02, North. The case was listed on 20th August, 2015 for filing of WS and reply to the injunction application.

(x) On 20th August, 2015 instead of filing the written statement an application under Order VII Rule 11 (a) & (d) CPC with Order II Rule 2 CPC was filed. However reply to the injunction application was filed.

(xi) The case was listed on 8th September, 2015 for arguments on injunction application. No such incident as referred to in Annexure P-7 and P-8 has taken place and he did not make any such comment as stated in the affidavit. Rather the copy of the judgment sought to be referred to by the petitioners/defendants had been filed and available on record.

7. The learned ADJ-02, North has annexed the copy of the judgment relied upon by the petitioners and available on record along with his report. Learned ADJ-02, North has specifically mentioned in his report that petitioners are conscious of the consequences of the disobedience of the Court order and had made allegations as contempt application is pending for disposal.

8. On the one hand there are petitioners before this Court who claim

their right to have a fair trial accusing learned ADJ-02, North of extending threat to the petitioners and their counsel and on the other hand this Court has to see that the power of transfer vested in this Court is not allowed to be abused/misused by the litigants either to delay the disposal of the case against them or to demoralize the judicial officers. Section 24 of the Code of Civil Procedure confers general power of transfer and this power is to be exercised by this Court with extra care and caution.

9. In the case Rajkot Cancer Society vs. Municipal Corporation Rajkot AIR 1988 Guj. 63, it was held as under:

'It must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another has to be exercised with due care and caution bearing in mind that there should be no unnecessary, improper or unjustifiable stigma or slur on the Court from which the case is transferred.'

10. In the case Jagatguru Shri Shankaracharya Jyotish Peethadhiswar vs. Shri Swaini Swaroopanand Saraswati AIR 1979 MP 50, it was held as under:

'Another factor that has to be taken into consideration is the interest of justice. A case has to be transferred if there is reasonable apprehension of a party to a suit that he might not get justice in the Court where the suit is pending. This may be because the trial Judge is prejudicial or because there in the

surcharged atmosphere no fair trial is possible at that place. This Court in Raghunandan v. G. H. Chawla 1963 MPLJ 117 has held as under:--

"The learned District Judge lost sight of the well recognised position that the question whether the apprehension entertained by an applicant that he might not get justice at the hands of a particular Judge, was a reasonable apprehension or not had to be determined on such material as was on record and on the explanation of the Judge concerned. The onus of establishing sufficient grounds for transfer lay very heavily on the applicant. No account of imaginary suspicion or capricious belief could be permitted to be raised as a ground for transfer. The view, in the circumstances on record, taken by the learned District Judge was as capricious as the feeling of the applicant seeking transfer."

11. When the case of the petitioners is examined in the light of above principles, I am of the considered view that this transfer petition deserves dismissal as from the record it is not borne out that there is any bias against the petitioners or the apprehension of the petitioners is genuine. Infact the learned ADJ-02, North during trial of the first suit No.78/2015 assigned to that Court had exercised the discretion at two stages in favour of the petitioners as under:-

- (i) By not proceeding exparte when they failed to appear despite service either in person or through counsel;
- (ii) When the written statement and reply to the injunction application though not filed within the stipulated period, the learned ADJ-02, North exercised the judicial discretion in their favour by condoning the delay in filing the written statement and reply. Thus, giving an opportunity to the petitioners to contest the case on merits.

12. It is noteworthy that when the first Civil Suit No.78/2015 was pending trial before learned ADJ-02, North, the petitioners had no such grievance. After the said suit was dismissed as withdrawn with liberty to file a fresh suit in terms of the order passed by this Court in FAO No.244/2015 & CM No.14054/2015, the second suit bearing No.217/2015 was also assigned to the same Court. The petitioners had no grievance against the learned ADJ-02, North upto the stage of contempt application filed by the plaintiff/respondent against the defendants/petitioners.

13. The grounds mentioned in the transfer petition for seeking transfer of Civil Suit No.217/2015 from the Court of learned ADJ-02, North are not such so as to cause reasonable apprehension in the mind of the petitioners of not getting justice from the learned ADJ-02, North District, Rohini.

14. The petition has no merits and the same is hereby dismissed.

15. No costs.

16. As prayed, copy of the order be given dasti to learned counsel for the parties.

CM No.16084/2015

Dismissed.

PRATIBHA RANI, J.

NOVEMBER 04, 2015

'pg'