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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13.10.2015

TR.P.(CRL.) 44/2015 & CRL.M.A. 15165-15167/2015

MUNNI DEVI

..... Petitioner

Through: Mr S.K.Vashistha, Advocate.

versus

ASHA SHARMA & ANR

.... Respondents

Through: None.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Section 407 of the Code of Criminal Procedure, 1973 (Code) read with Section 482 of the Code praying as follows:-

- “A. to call for the record of Appellate Court pertaining to appeal no.15/2014 titled as Asha Sharma Vs. Rajpal Sharma & Anr. from the Hon’ble Court of Sh. Reetesh Singh, ASJ, Patiala House Court, New Delhi;
- B. to quash and set-aside order dated 22-8/2015 passed by the Hon’ble Court of Sh. Amar Nath Distt. & Session Judge Patiala House Court New Delhi passed in Transfer Application No.87/2014 in Appeal NO.15/2014 titled as Asha Sharma Vs. Rajpal Sharma & Anr.;
- C. to transfer the appeal no.15/2014 titled as Asha Sharma Vs. Rajpal Sharma & Anr. from the Hon’ble Court of Sh. Reetesh Singh, ASJ, Patiala House Court to any other courts as deemed fit by this Hon’ble Court;
- D. to stay the proceedings of the appellate court pertaining to appeal no.15/2014 titled as Asha Sharma Vs. Rajpal Sharma & Anr. before the Hon’ble Court of Sh. Reetesh Singh, ASJ, Patiala House Court; and
- E. to pass any other/further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. It has been urged that the procedure adopted by the Presiding Officer while hearing Appeal No.15/2014 was alien to law. In this behalf attention has been invited by learned counsel appearing on behalf of the petitioner to paragraphs H, I and J of the present transfer petition. The same are reproduced as follows:

“H. That on 14-10-2014 during the proceeding of the Appeal, the Ld. Presiding Officer in violation of the Court procedure, expressed his mind in open court to hand over the custody of the minor child to the Respondent no.1 without even going through the facts of the case, what to say about the merit of the case and without hearing the parties.

I. That the Ld. Presiding officer even went to the extent of asking the respondent no.1 whether she can get the child admitted in a school in Delhi if he hands over the custody of the child to the respondent no.1 now itself. The Respondent no.1 was not sure whether she will be able to get the child admitted immediately or not. Further the Ld. Presiding officer orally asked the Respondent no.1 to explore the possibility of admission of the minor child in some school and file affidavit on or before next date of hearing i.e. 17-11-2014.

J. That when the counsel for the petitioner herein object to the above oral directions of the Hon'ble Presiding Officer, very surprisingly firstly the Ld.

Presiding Officer asked about the marital status of the counsel for the petitioner and further said that you (counsel for petitioner) being an unmarried person cannot understand the nature, gravity and consequence of the dispute under consideration. The Ld. Presiding officer even stated that he has personal knowledge of such disputes.”

3. In sum and substance it has been urged on behalf of the petitioner that whilst hearing Appeal No.15/2014 titled as *Asha Sharma v. Rajpal Sharma & Anr.*, the learned Additional Sessions Judge expressed his mind in open court “*without even going through the facts of the case, what to say about the merit of the case and without hearing the parties.*”

4. Aggrieved by the alleged “misconduct” of the learned Additional Sessions Judge as aforesaid the petitioner filed a transfer petition before the learned District and Sessions Judge, Patiala House Courts, New Delhi, seeking transfer of the above said Appeal No.15/2014 from the court of Sh. Reetesh Singh, Additional Sessions Judge to any other court. It is urged on behalf of the petitioner that the said transfer petition was “erroneously dismissed” by the court of Sh. Amar Nath, District and Sessions Judge, Patiala House Court, New Delhi, by way of the impugned order dated 22.08.2015.

5. After hearing counsel appearing on behalf of the parties the learned District and Sessions Judge, Patiala House Courts, New Delhi, came to a conclusion that it was neither just nor expedient nor in the interest of justice to transfer the matter as prayed for by the petitioner herein. The learned Sessions Judge observed as under:-

“It is trite to say that this Court has a power to withdraw any case from any Court with a view to assign the same to some other Court for disposal if it is expedient for the ends of justice. The contention of the Ld. Counsel for the applicant that Sh. Reetesh Singh, Ld. ASJ has expressed his mind in the open court so he would not be able to get the justice from the said Court does not inspire any confidence simply for the reason as no Court of justice can afford the luxury of ignoring the merits of the case. Furthermore, the Ld. ASJ has categorically denied the contents of the transfer application in his comments as so sought submitting that the application is nothing but an attempt to browbeat, moreso it is a pressurize tactics. I find no reason to disbelieve the comments of the Court as nothing contrary is shown or produced. Besides this, every application shall be supported with an affidavit of the party but in the instant case neither the application was signed by any of the applicants nor accompanied with affidavit of the party which also attracts an adverse inference.”

6. I am in complete agreement with the impugned decision. The present is prima facie nothing but an attempt to forum shop and delay the disposal of the appeal pending before the learned Additional Sessions Judge. In my view in the facts and circumstances aforesaid it is neither just, necessary nor expedient in the interest of justice to transfer the said Appeal No.15/2014

from the Court of Sh. Reetesh Singh, learned Additional Sessions Judge. The attempt of a litigant to browbeat and intimidate a Presiding Officer cannot be countenanced by this court.

7. Dismissed.

SIDDHARTH MRIDUL, J

OCTOBER 13, 2015

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