

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1236 OF 2016

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MEERA VIJAY MUKHEDKAR THROUGH GPA VIJAY
GANESHRao MUKHEDKAR
VERSUS
LAXMINARAYAN VENKOBASA DAMAM AND OTHERS

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Advocate for Petitioner : Mr A A Mukhedkar h/f A A Kokad
Advocate for Respondent 3 : Mr N T Tribhuvan

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CORAM : V.K. JADHAV, J.

Dated: February 26, 2016

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PER COURT :-

1. With the consent of learned counsel for parties, heard finally.
2. The petitioner is the original plaintiff, instituted a Special Civil Suit No.70 of 2014 which is pending before the learned Jt. Civil Judge (S.D.), Nanded. By way of this writ petition, the petitioner is challenging the correctness and legality of the order dated 7.1.2016 passed below Exh.1 in R.J.E No.2 of 2016 by the Principal District Judge, Nanded, whereby the Special Civil Suit No.70 of 2014 which was pending in the Court of Jt. Civil Judge S.D. Nanded is ordered to be transferred to the Court of Civil Judge S.D. Nanded.

3. Learned counsel for the petitioner submits that, the applicant/original defendant no.3 is not a contested party and that, he has insisted for transfer of the matter only for the reason that there is no proper application of judicial mind by the learned Jt. Civil Judge, S.D., Nanded and the said court has not followed proper procedure while dealing with the case. Learned counsel submits that, the Principal District Judge, Nanded has passed the order in a very casual manner and without any reasons, transferred the matter to learned Civil Judge, S.D., Nanded. Learned counsel submits that, an order of transfer must reflect application of mind by the Court and the circumstances in taking the action. Learned counsel submits that, in the case in hand, there is no application of mind and, there are no circumstances on record to indicate that transfer of the matter from one court to another is for justifiable reasons. Learned counsel for the applicant, in order to substantiate his submissions, places on the judgment in case of **Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others** reported in **AIR 2008 SUPREME COURT 1333**.

4. Mr Tribhuvan, learned counsel appearing for respondent no.3 submits that, the Principal District Judge, Nanded, has correctly passed the transfer order after considering the facts and circumstances of the case. Learned counsel further submits that, the Principal District Judge, Nanded, has passed the well reasoned order and the order impugned thus calls for no interference.

5. The applicant/original defendant no.3 is impleaded as a party to the suit by the petitioner/original plaintiff. Learned counsel for the petitioner also submits that, he is a necessary party for the proper adjudication of the suit before the Court.

6. It appears from the contents of the application filed by the original applicant that, most emphasis is on the point that there is no proper application of judicial mind by the Court and the Court has not followed the proper procedure while dealing with the case, consequently, the applicant/original defendant no.3 has lost the faith and thus, constrained to file an application

for transfer of the suit. Even, in paragraph no.16 of the impugned order, the learned Principal District Judge, Nanded, has observed that, it is apparent that the submissions made by the applicant in this application are inferences of the applicant as the trial court has given short time for their compliance or sometimes their applications were rejected or allowed with costs which has caused impression in their mind that the Court is prejudiced with them. The learned Principal District Judge, Nanded, has also made observations in paragraph no.17 of the impugned order that counsel for the applicant though not mentioned in the pleadings, by oral submissions pointed out certain instances indicating the attitude of the Trial Court towards the applicant. The learned Principal District Judge, Nanded, though formed opinion that, the Trial Court was only anxious to expedite the matter, further observed that, same has created some mis-understanding to the parties.

7. At the stage of considering the application for transfer, the Court cannot enter into the merits of the

matter as it may affect the final outcome of the proceedings. The learned Principal District Judge, Nanded, has not entered into certain allegations as that may cause prejudice to the parties to the suit. However, the learned Principal District Judge, Nanded, thought it fit to transfer the case from the learned Jt. Civil Judge S.D, Nanded, to the learned Civil Judge S.D. Nanded, in the given circumstances. The learned Principal District Judge, Nanded has passed the well reasoned order. I do not find any fault in the order impugned. Hence, following order.

ORDER

- I. Writ Petition is hereby dismissed.
- II. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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