

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8040 of 2015
Date of decision : January 29, 2016

Kapoor Singh (since deceased) through L.Rs
..... Petitioner

Versus

Partap (deceased) through L.Rs and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B. Goel, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the order dated 5.11.2015 whereby the District Judge has entertained the application for transfer of the matter filed at the instance of the defendants at the back of the petitioner.

Learned counsel for the petitioner-plaintiff submits that impugned order ex facie has been passed at the back of the petitioner and does not assign any reasons, in case such type of application at the instance of the parties is entertained, every second day parties would indulge into forum shopping. In support of his contentions he has relied upon paragraph 17 of the judgment of Hon'ble Supreme Court in **Kulwinder**

Kaur @ Kulwinder Gurcharan Singh Vs. Kandi

Friends Education Trust and others 2008 (1) RCR (Civil) 821.

Paragraph 17 reads thus:-

“In the case on hand, the High Court without stating anything whatsoever as to allegations and counter-allegations, without considering the reply submitted by the appellant herein and without recording any reason/ground passed the impugned order transferring the case. The learned counsel for the contesting respondent no doubt submitted that the Court has not observed anything since observations by a High Court one way or the other might prejudice one of the parties to the suit. It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action. In the instant case, it was alleged by the plaintiff that though more than three years had passed from instituting the suit, it was not disposed of and delay had been caused by the defendants as they were in office and they wanted to prolong the proceedings so that they may take undue benefit of their status. The defendants, in the reply filed by them, contended that delay had not been caused by them, but it was the plaintiff who was responsible for not proceeding with the suit and was to be blamed for creation of such situation. In support of the contention, zimni proceedings were relied upon. It was also urged that the plaintiff side could not get favourable order on applications under Order 39, Rules 1 and 2 of the Code and, hence, it wanted to get the case transferred. In view of the assertion and retraction by the plaintiff and the defendants, in our considered opinion, the High Court

ought to have applied its mind to those aspects and prima facie satisfied as to the grounds put forward by the plaintiff in the transfer application and ought to have passed an order one way or the other without entering into the controversy in the suit. Unfortunately, the High Court allowed the application observing that it would be appropriate to transfer the suit pending in the Court of Smt. Asha Konal, Civil Judge, (Sr. Divn.), Ropar to the Court of Sh. Y.S.Rathore, Additional Civil Judge (Sr. Divn.) Chandigarh. In our opinion, powers under Section 24 of the Code cannot be exercised ipse dixit in the manner in which it has been done. Only on that ground and without entering into larger issue, the appeal deserves to be allowed and is accordingly, allowed.

I have heard learned counsel for the appellant and appraised the paper book.

The impugned order reads thus:-

“An application for transfer of Civil Suit No. 38 of 2011 titled as “Kapoor Singh since deceased through his L.Rs Vs. Partap and ors.” pending in the Court of Sh. Naveen Kumar, Civil Judge (Junior Division) Charkhi Dadri, to some other Court on the grounds mentioned in the application, has been moved on behalf of applicant-defendant no.1 (a). It be checked and registered.

Heard. Without expressing any opinion on the merits of averments made in the transfer application, Civil Suit No.38 of 2011 titled as “Kapoor Singh, since deceased through L.Rs Vs. Partap and ors.,” pending in the Court of Sh.Naveen Kumar, Civil Judge (Junior Division), Charkhi Dadri, is hereby ordered to be withdrawn from his Court and is transferred to the Court of Ms.

Natasha Sharma, Addl.Civil Judge (Senior Division), Charkhi Dadri, for disposal in accordance with law. Parties through their counsel are directed to appear before the Court concerned on the date already fixed. Copy of this order be sent to both the aforesaid Courts, for compliance.”

On perusal of the impugned order, it is evident that District Judge on receipt of transfer application without calling upon the petitioner-plaintiff transferred the suit. Such type of order, in my view cannot be sustained for a second, as the petitioner has been prevented to present his case before it, which is duly supported by the ratio decidendi culled out in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's case (supra)**.

In such type of matters, adverse party is required to be heard and submit its objections, much less file reply.

Accordingly, the impugned order is hereby set aside. The matter is remitted back to the District Judge, Bhiwani to hear the transfer application after issuing notice to the other party and give an opportunity to file reply and decide the same taking into consideration the ratio decidendi culled out in the aforementioned case.

The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

January 29 , 2016
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