

In the High Court of Punjab and Haryana at Chandigarh

T.A. No. 345 of 2015

Date of Decision: February 11, 2016

Manjit Kaur and another

... Applicants

Versus

Vijay Kumar Kaushal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. A.P. Kaushal, Advocate,
for the applicants.

Mr. H.K. Aurora, Advocate,
for respondents no. 1 to 4.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant application has been filed under Section 24 of the Code of Civil Procedure for transfer of civil suit No. 888/14 titled “Manjit Kaur and another vs. Vijay Kumar and another”, pending in the court of learned Civil Judge (Senior Division), Jalandhar, CMA No. 106 of 2015 titled “Manjit Kaur and another vs. Vijay Kumar and another”, pending in the Court of learned Additional Sessions Judge, Jalandhar and execution application No.60 of 2014 titled “Vijay Kumar and another vs. Ajit Kaur and others” pending in the Court of learned Civil Judge (Senior Division), Jalandhar to the any other Court of competent jurisdiction in the State of Punjab.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the applicants contends that respondent no.2 – Neeraj Kaushik is practicing advocate and member of the bar

association of advocates at Jalandhar and Vijay Kumar – respondent no.1 is close relative. Learned counsel further contends that advocates of Jalandhar Bar refrain from appearing and questioning the fellow members, namely, Neeraj Kaushik, Advocate particularly on the question of forgery and fraud. The applicants tried their best to engage some good counsel at Jalandhar but due to the above said reason no one is ready to accept the brief of the applicants.

Per contra, learned counsel for the respondents vehemently opposes the contentions raised by learned counsel for the applicant.

Identical contentions were raised before this Court in the case of Nikhil Sharma vs. A.N. Bhardwaj, 2001(1) R.C.R. (Civil) 76. In the case of Nikhil Sharma (supra), this Court has held as under:-

“8. In Ashok Kumar v. Narendera Kumar Jain, 1989(2) CLJ (CO. and Rev.) 191 it was observed that a refusal by a lawyer or two in not taking the case of the petitioner does not mean that the petitioner cannot avail of professional services.

9. It was also submitted that it matters of transfer of cases, convenience of both the parties has to be seen and not only the convenience of one of the parties has to be taken into consideration. In *Jyotsna Raje v. Jag-pal Singh*, AIR 1961 Punjab 560 it was observed as follows :-

"In deciding an application for transfer the convenience of the parties in the conduct of litigation is a relevant consideration. But the convenience which is to be taken into consideration by the Court is the convenience of both the parties and not only of one of them.

In the absence of any material justifying any reasonable apprehension in regard to the impartiality of the judge trying the case, the mere fact that the opposite party is a very senior Government official at the place of the court where the case is

pending is not sufficient to raise any reasonable apprehension that the petitioner would not get fair and impartial treatment in the court."

10. In Rajkot Cancer Society-petitioner v. Municipal Corporation-respondent, 1987 PAP 481 (Gujarat) it was held that, "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, it 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 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 (he case is transferred".

11. Sh. A.N. Bhardwaj is a senior advocate practising at Ludhiana. He and his son are plaintiffs in a suit for recovery off Rs. 31,49,500/-. Nikhil Sharma and others defendants are out-siders. No wonder, they are put at disadvantage vis-a-vis the plaintiffs so far as the fair trial of the suit at Ludhiana is concerned. Justice should not only be done but it should seem to have been done. There will be no harm to the plaintiffs if the case is transferred from Ludhiana court to some other court at Chandigarh in the hope that trial of the case shall be more just and fair at Chandigarh, because at Chandigarh, neither party shall have an edge over the other. At Ludhiana, plaintiffs may have edge over the defendants.

12. Taking into account the over-all picture of the case, I feel that in the interest of smooth, fair and speedy trial of the

case, it would be just and fair if the case is transferred from Ludhiana court to Chandigarh court. So, the case is transferred from Ludhiana court to Chandigarh court. Parties shall appear before the learned District Judge, Chandigarh on 31.10.2000. Learned District Judge, Chandigarh will assign this suit for disposal to some competent court having jurisdiction into the matter. Learned trial Court at Ludhiana will send the file of the suit complete in all respects well before the date fixed to the learned District Judge, Chandigarh.”

In view of the above, transfer application is allowed. Civil suit No. 888/14 titled “Manjit Kaur and another vs. Vijay Kumar and another”, pending in the court of learned Civil Judge (Senior Division), Jalandhar, CMA No. 106 of 2015 titled “Manjit Kaur and another vs. Vijay Kumar and another”, pending in the Court of learned Additional Sessions Judge, Jalandhar and execution application No.60 of 2014 titled “Vijay Kumar and another vs. Ajit Kaur and others” pending in the Court of learned Civil Judge (Senior Division), Jalandhar are withdrawn and ordered to be transferred to learned District Judge, Shaheed Bhagat Singh Nagar, who may assign the same to the Court of competent jurisdiction there. Learned transferee courts, shall ensure that entire record of the case is sent to learned District Judge, Shaheed Bhagat Singh Nagar.

Parties through their counsel are directed to appear before the Court of learned District Judge, Shaheed Bhagat Singh Nagar on 01.03.2016.

The applicants are directed to appear in the Court and ensure that they should argue the cases on that date. The Court shall not grant date for more than 15 days and the matter will be decided within two dates.

February 11, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge