

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

TA No.354 of 2015

Date of Decision : 21.3.2016

Pardeep Kalia

.....Applicant

Vs.

Dev Krishan

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Satinder Khanna, Advocate for Mr. Munish Gulati,
Advocate for the applicant.
Mr. Rohit Ahuja, Advocate for the respondent.

...

1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Applicant, by way of instant application under Section 24 of the Code of Civil Procedure, seeks transfer of Rent Petition No.9 dated 21.4.2015, titled as Dev Krishan Vs. Pardeep Kalia, pending consideration before the learned Rent Controller, Kapurthala, to any other court of competent jurisdiction outside District Kapurthala.

Notice of motion was issued and pursuant thereto, reply has been filed.

Heard learned counsel for the parties.

Learned counsel for the applicant submits that respondent was President, District Bar Association, Kapurthala, when he filed the above said rent petition. This was the reason that no counsel was ready to accept the brief of the applicant, who is respondent in the rent petition.

Per contra, learned counsel for the respondent, while referring

to para 3 of the reply, submits that respondent is no more President of the District Bar Association, Kapurthala, as election has taken place in the month of December 2015. He submits that the petitioner has also engaged a counsel, who is conducting the case on behalf of the petitioner. He submits that more than one other litigations at the instance of the petitioner are already pending at Kapurthala, wherein two learned counsel from Kapurthala itself are pursuing those litigations on behalf of the petitioner. He refers to Annexures R-3 and R-4 in this regard.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, particularly the changed situation, no case for transferring the above said rent petition is made out.

It is so said because the basic ground for transferring the rent petition from outside Kapurthala is no more available to the petitioner. The rent petition is being conducted on his behalf by a learned counsel. Further, it has also gone undisputed on record that more than one other litigations, at the instance of the petitioner himself, are pending at Kapurthala, which are being conducted by learned members of the Bar from Kapurthala itself. In this view of the peculiar fact situation obtaining in the present case, instant one has not been found to be a fit case for transferring the above said rent petition from Kapurthala to any other court of competent jurisdiction outside District Kapurthala.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as different

High Courts, including this Court: -

- 1. *Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani, AIR 1979 (SC) 468.***
- 2. *Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4.***
- 3. *Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.***
- 4. *Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.***
- 5. *Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.***
- 6. *Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferi, AIR 2009 (SC) 1773.***
- 7. *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 (SC) 1374.***
- 8. *Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.***
- 9. *Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.***
- 10. *M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.***
- 11. *Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.***
- 12. *Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.***
- 13. *Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.***
- 14. *Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh, 2012 (8) RCR (Civil) 84.***

The relevant observations made by the Hon'ble Supreme Court

in Kulwinder Kaur @ Kulwinder Gurcharan Singh's case (supra), which

can be gainfully followed in the present case, read as under: -

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”

Again, the law laid down by the Hon'ble Supreme Court in Subramaniam Swamy's case (supra), which aptly apply to the facts of the case, reads as under :-

The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this court with the discretion to transfer the case from one court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude for the ends of justice have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done, if for

achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present petition is misconceived and bereft of merit. No case for transferring the rent petition from Kapurthala to any other court of competent jurisdiction outside District Kapurthala has been made out.

Resultantly, with the observations made above, instant transfer application stands dismissed, however, with no order as to costs.

21.3.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE