

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**TA No. 485 of 2015 (O&M)
Date of decision: 6.4.2016**

Baljit Kaur

.. Applicant

Vs.

Tilak Raj Gupta

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. K.S. Chawla, Advocate
for the applicant.

Mr. K.S. Dadwal, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (Oral)

CM No. 23062-CII-2015

Applicant seeks permission to place on record Annexure P-40 and also seek exemption from filing certified copy thereof.

Application is allowed, as prayed for.

CM stands disposed of.

CM No. 23116-CII-2015

Applicant-respondent seeks permission to place on record

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certified copies of Annexures R-1, R-2 and copy of reply as well as seeks exemption from filing true typed copy of Annexures R-1 and R-2.

Application is allowed, as prayed for.

CM stands disposed of.

TA No. 485 of 2015

Applicant, by way of instant transfer application under Section 24 read with Section 151 of the Code of Civil Procedure, 1908, seeks transfer of civil suit No. 1117 of 2009, fresh No. CS 120/09/14 titled as Baljit Kaur Vs. Tilak Raj Gupta (Annexure P-22) and civil suit No. CS 171/1-10-11, fresh No. RBT CS 47/1-10-11/24-02-2015, titled as Tilak Raj Gupta Vs. Baljit Kaur (Annexure P-33), from Hoshiapur to Chandigarh.

Notice of motion was issued.

Before proceeding further on merits of the case, order dated 28.3.2016 passed by this Court deserves to be referred here. On the said date, learned counsel for the respondent made a statement before this Court that since the applicant is an old lady of about 80 years, respondent would be paying expenses of to and fro for the applicant, so as to enable her to go from Chandigarh to Hoshiarpur to pursue the abovesaid litigation. He offered to pay an amount of ₹5,000/- to the applicant on each date of hearing as and when her presence was required in the Court at Hoshiarpur.

However, learned counsel for the applicant submits that since on the last date of hearing, he himself was not present and

learned proxy counsel, who appeared on his behalf, was not well instructed about the poor health condition of the applicant, which would not permit her to undertake travelling between Chandigarh to Hoshiarpur. In this regard, learned counsel for the applicant has placed before this Court medical prescription dated 19.10.2015 given by Dr. R.C. Gupta, who is running Health Care Clinic at Sector 21-D, Chandigarh.

A bare perusal of the abovesaid medical prescription prima facie shows that applicant is suffering from some age related ailments like cervical spondylitis and osteoporosis. In addition to that, there is voluminous record available on the case file, running from page No. 31 to 58 in the form of Annexures P-2 to P-20. A bare reading of the abovesaid annexures would show that applicant has been facing different medical problems. Apart from the abovesaid medical record, distance between Chandigarh and Hoshiarpur is about 140 kilometers.

Learned counsel for the applicant concluded by submitting that since the applicant is widow and her son is an NRI whereas her daughter is already married, it would not only be inconvenient but very difficult for the applicant to pursue the litigation while going to Hoshiarpur. He prays for allowing the instant application.

Per contra, learned counsel for the respondent vehemently opposed the instant application contending that it is not the sweet will of the applicant which is to prevail upon. He submits that the learned court at Chandigarh has no jurisdiction to try both

the abovesaid civil suits. In support of his contentions, learned counsel for the respondent places reliance on Section 16 of the CPC and also a judgment of this Court in Indian Overseas Bank, Chandigarh Vs. Bargian Shoes Ltd., Chandigarh and others, 1993 (1) PLR 301. He also places reliance on the provisions of law contained in Order 26 Rule 1, CPC. He further referred to the order dated 24.5.2014 passed by learned Additional Civil Judge (Sr. Division) in the complaint filed by the applicant. However, this contention raised by learned counsel for the respondent has been refuted by the learned counsel for the applicant contending that an appropriate petition filed by the applicant seeking transfer of her complaint from Hoshiarpur to Chandigarh is also pending consideration before this Court.

Having heard the learned counsel for the parties at considerable length, after careful perusal of 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 peculiar facts and circumstances of the case noted above, instant transfer application deserves to be allowed. It is so said because health condition of the applicant does not permit her to undertake traveling from Chandigarh to Hoshiarpur. She is an old lady of about 80 years. There is voluminous medical record available on the case file which supports the abovesaid view point on the age and ill health of the applicant.

This court refrain itself from making any observations on the controversy involved in the abovesaid two civil suits, lest it

should prejudice the rights of either of the parties. In fact, that is not even required for the purpose of deciding the instant transfer application. However, it is the settled proposition of law that justice is not only to be done but it should also seem to have been done. Forcing the applicant to continue pursuing the abovesaid litigation, while going from Chandigarh to Hoshiarpur would certainly amount to denial of justice to the applicant.

Learned counsel for the applicant has been found fully justified in contending that owing to her age, it would not only be inconvenient but very difficult for the applicant to go from Chandigarh to Hoshiarpur to pursue the abovesaid litigation. Further, convenience of senior citizens like the applicant and distance between two places would be some of the relevant considerations for deciding the transfer application like the present one.

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 Jaffer, 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 para 14 of its judgment 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, deliberating on an identical issue, in the case of **Dr. Subramaniam Swamy** (supra), the Hon'ble Supreme Court held 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.

(emphasis supplied)”

The abovesaid view taken by this Court also finds support from an order dated 16.03.2016 passed by this Court in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal), which, in turn, was based on the judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court.

So far as the issue of jurisdiction raised by learned counsel for the respondent is concerned, it goes without saying that, the moment this Court order transfer of the abovesaid civil suits, learned court at Chandigarh will have the jurisdiction to try the same. Identical issue fell for consideration before the Karnataka High Court in **M.V. Rekha's case (supra)** and after detailed deliberation on the issue of territorial jurisdiction and also following the law laid down by the Hon'ble Supreme Court as well as different High Courts, it was held as under:-

8. Section 24 of the Civil Procedure Code provides for the general power of **transfer** and withdrawal of the suits, appeal or other proceedings. The relevant provision is sub-section (1)(b) of Section 24, which is as under:

"Section 24. General Power of transfer and withdrawal : (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) xxx xxx xxx

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn."

9. The section confers general power to transfer, withdraw and transfer suits, appeals or other proceedings at any stage on the application of a party. The power of the High Court and District Judge are concurrent. The Court may also exercise the power suo motu. The section postulates that the Court to which the suit or appeal or other proceeding is transferred should be competent to try or dispose of the same. The contention of the learned Counsel for the respondent is that the cause of action for filing of M.C. No.159/2009 has accrued at Mysore and that the Family Court at

Bangalore is not competent to try the said case. In other words, the Family Court at Bangalore has no territorial jurisdiction to try the case. Therefore, the question for consideration is whether under Section 24 of the Civil Procedure Code, a case can be transferred from a Court where it was instituted and competent to try and has territorial jurisdiction to try the case, to some other Court, which does not have territorial jurisdiction. The cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. The point involved in this case is a pure question of law and its decision depends upon the construction of the words competent to try' occurring in Section 24(1) of the Civil Procedure Code

10. If the words contained in Section 24 are to be taken literally, it might be open to argument that the word competency' includes both pecuniary and territorial jurisdiction. It is necessary that the Court to which the case is transferred must have territorial jurisdiction, would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of a District Judge of another District. Keeping this in mind, the Courts have interpreted words competent to try' occurring in Section 24(1) of the Civil Procedure Code referring only to pecuniary jurisdiction. In **Ram Das and another v. Habib Ullah, AIR 1933 Allahabad 178**, a Division Bench of the Allahabad High Court held that a Court is not competent to try and dispose of a

suit if it does not possess both pecuniary and territorial jurisdiction to entertain it. This decision was rendered by the Division Bench on 16.4.1931. However, by a subsequent decision in **Kishore Lal v. Balkishan, AIR 1932 Allahabad 660. D/d. 16.6.1932**, Chief Justice Sulaiman gave reasons for reconsidering the previous view and holding that territorial jurisdiction does not come within the meaning of the words competent to try' occurring in Section 24 of the Civil Procedure Code and that they must refer only to pecuniary jurisdiction. This decision of the Allahabad High Court has been consistently followed by various High Courts. It is to be noted here that the territorial jurisdiction can be waived because it does not go to the root of the case whereas competence of the Court to try the case goes to the very root of the jurisdiction and refers to the inherent lack of jurisdiction by the Court. In this connection, it is relevant to note the observations of the Apex Court in **Hira Lal Patni v. Kalinath, AIR 1962 Supreme Court 199**, which is as under:

"It is well settled that the objection as to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try case. The competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a Court can be waived."

This judgment of the Apex Court supports the view that the competence to try a case refers to the inherent jurisdiction to try and not for territorial jurisdiction.

11. A Full Bench of the Madras High Court in **P. Madhavan Unni v. M. Jayapandia Nadar, AIR 1973**

Madras 2, was considering a similar question. It has been held as under:

"Next, to restrict the meaning of the words competent to try or dispose of the same used in Section 24(1)(b)(ii), Civil Procedure Code to territorial jurisdiction over the property of the judgment debtor or the residence qualification of the judgment debtor would lead to grave anomalies and failure of justice. Thus, if the presiding officer of the executing Court happens to be the judgment debtor himself and owns the property in his jurisdiction which is being proceeded against, or if he has taken a prejudicial attitude to one party, and that is urged as a ground for transfer of the execution proceeding, it will be impossible to transfer the execution proceeding to any other subordinate Court, if the restricted meaning above sought to be given to the word competency is to be accepted. It appears to us that the word competency used in the above Section cannot be used to restrict the power of the District Court or the High Court under Section 24, Civil Procedure Code to transfer the execution proceeding only to a Court which has territorial competency, or jurisdiction over the place where the judgment debtor resides or works for gain. It has to be given a sufficiently wide interpretation to include each and every Court within the jurisdiction of the superior Court, empowered to deal with such execution application. We respectfully agree with the above observation of the learned Judge. We consider that the power of transfer, under Section 24 of the Code of a suit, appeal or other proceedings, by a

High Court or a District Court to a Court within their respective remedy and no fetters should be placed upon it on grounds of want of territorial jurisdiction of the transferee Court.

(Emphasis supplied by me)

12. A Division Bench of Rajasthan High Court in **M/s. Maliram Nemichand Jain v. Rajasthan Financial Corporation and another, AIR 1974 Rajasthan 204** has held that while interpreting the provision of law, the Court has to take into consideration all the circumstances and if by giving a narrow meaning to the word 'competent' in Section 24, an impossible situation is created, then the Court shall have to interpret the word in such a way that it may not create bottlenecks for the Court to function under certain circumstances. The Court further held that the District Judge presiding over the District Court of Jaipur District was competent to deal with the execution proceedings in this case when they were duly transferred under the orders of the High Court.

13. In **Mulraj Doshi v. Gangadhar Singhania, AIR 1982 Orissa 191**, the Orissa High Court has held that the words 'competent to try' included in Section 24 of the Civil Procedure Code refers to pecuniary jurisdiction and not territorial jurisdiction.

14. It is clear from the above discussion that the words 'competent to try' included in Section 24(1) of the Civil Procedure Code does not refer to territorial jurisdiction. The High Court or the District Judge can transfer a case under this provision to a Court, which need not have territorial jurisdiction over the subject-matter of the litigation if the transferee Court is otherwise competent to try it. If that is so, there is no bar for this Court to

transfer the case filed by the respondent seeking restitution of conjugal rights in M.C. No.159/2009 pending on the file of the Principal Family Court at Mysore to the Court of First Additional Family Judge, Bangalore.

15. The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See **Smt. Nanda Kishori v. S.B. Shivaprakash, AIR 1993 Karnataka 87; Sumita Singh v. Kumar Sanjay & another, AIR 2002 Supreme Court 396** and **Smt. Swarna Gouri Vs. Sri Vinayak Pujar, ILR 2007 Karnataka 4561**).

So far as the judgment relied upon by the learned counsel for the respondent is concerned, there is no dispute about the law laid down therein. However, on a close perusal of the cited

judgment, the same has not been found of any help to the respondent, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

So far as the provisions contained in Order 26 Rule 1 CPC, relied upon by the learned counsel for the respondent, are concerned, that requirement and necessity may still arise for the learned court of competent jurisdiction at Chandigarh, to invoke those provisions at the relevant stage of trial. However, provisions contained in Order 26 Rule 1 CPC would not come in the way of the applicant, seeking transfer of the abovesaid civil suits from Hoshiarpur to Chandigarh.

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 instant transfer application deserves to be accepted and the same is hereby allowed. Both the abovesaid civil suits pending between the parties at Hoshiarpur are ordered to be transferred to Chandigarh.

Accordingly, the learned District Judge, Hoshiarpur, is directed to send complete record of the abovesaid civil suits to the learned District Judge, Chandigarh, at an early date but in any case

within a period of one month from the date of receipt of a certified copy of this order.

The learned District Judge, Chandigarh, is also directed to assign both the civil suits to the learned court of competent jurisdiction for their early decision, in accordance with law.

Parties are directed to appear before the learned District Judge, Chandigarh, on 16.5.2016.

With the abovesaid observations made and directions issued, instant transfer application stands disposed of, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

6.4.2016
AK Sharma