

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**TA No.644 of 2015
Date of decision:30.3.2016**

Arun Goyal and another

...Applicants

Versus

Anita Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Ms.Deepali Puri, Advocate for the applicants.
Mr.Amit Jhanji, Advocate for respondent No.1.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicants, by way of instant application under Section 24 of the Code of Civil Procedure, seek transfer of a civil suit for specific performance filed by the applicants on 29.11.2006 from the court of learned Civil Judge (Junior Division), Chandigarh to another court of competent jurisdiction at Panchkula or Mohali.

Notice of motion was issued by this Court vide order dated 10.9.2015 for 4.12.2015. Reply to this transfer application was filed by learned counsel for respondent No.1 in the Court on 4.12.20015 but the adjournment was sought on behalf of learned counsel for the applicants. On the request made on behalf of learned counsel for the applicants, the case was adjourned to 30.3.2016.

However, applicants moved CM No.27529-C-II of 2015, seeking early hearing of the main transfer application and this application

for early hearing came to be listed before the Court on 8.1.2016. No case for early hearing was found to be made out and this application was dismissed vide order dated 8.1.2016.

Thereafter, the applicants approached the Hon'ble Supreme Court against the above-said order dated 8.1.2016 passed by this Court by way of SLP(C) No.1711 of 2016 (Arun Goyal and another v. Anita Rani and others). The Hon'ble Supreme Court vide its order dated 1.2.2016 issued notice and in the meantime proceedings pending before the learned trial Court were stayed.

It seems that the order dated 4.12.2015 passed by this Court, adjourning the case to 30.3.2016 on the request made on behalf of learned counsel for the applicants was not brought to the notice of the Hon'ble Supreme Court.

Be that as it may, learned counsel for the applicants sought an adjournment even today. However, since the request for adjournment was opposed by the learned counsel for the respondent, the same was declined.

Learned counsel for the applicants has simply stated that let an appropriate order be passed in the instant transfer application.

However, learned counsel for the respondents has vehemently contended that the applicants have levelled factually incorrect and baseless allegations not only against a number of Advocates but also against the Judicial Officers. He further submits that this very civil suit, which is being sought to be transferred, had been going on before the learned trial Court for the last more than 9 years. When both the parties to the litigation have concluded their respective evidence and the case was ripe for arguments,

instant transfer application was moved by the plaintiffs-applicants before this Court which is based on frivolous allegations and the same is liable to be dismissed with exemplary costs. Learned counsel for the respondents in support of his contentions, also placed reliance on a judgment of the Hon'ble Supreme Court in **Jaswant Singh v.Virender Singh and others, 1995 Supp (1) SCC 384.**

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 contentions raised, this Court is of the considered opinion that the present transfer application is without any merit and the same is liable to be dismissed for the following more than one reasons.

Suit for specific performance contained in Annexure P-1 came to be filed by the applicants-plaintiffs in the month of November 2006, to be precise on 29.11.2006 as stated by the applicants. After the plaintiffs-applicants concluded their evidence, the defendants-respondents produced their evidence and the same was also concluded. Thereafter, the case was listed for arguments. When the case was listed for arguments on 5.12.2015, the Presiding Officer was on leave, as claimed by the applicants and the case was adjourned to 19.12.2015 for arguments. Thereafter, the case was adjourned to 22.12.2015 and then to 2.1.2016, as stated by the applicants in their Civil Misc. application No.27529-C-II of 2015. During all this period of about 9 years, applicants did not raise any kind of objection in this regard nor they sought transfer of civil suit to any other court.

Although no argument, whatsoever, has been raised before this Court during the course of hearing, on behalf of the applicants, yet a bare

perusal of the allegations levelled in the transfer application would show that the same, if at all, pertains to a different litigation, arising out of a suit for recovery filed by the respondents against the present applicants. Said suit for recovery was filed vide Annexure P-2 by the learned counsel, who is not named in the instant transfer application. After dismissal of said civil suit for recovery, the appeal was filed through the counsel, whose name has been mentioned in paras 3 to 5 of the present transfer application. However, it is pertinent to note here that said learned counsel did not argue the appeal before the learned District Judge, Chandigarh which is clear from the judgment Annexure P-4, thus an unwarranted attempt made by the applicants to substantiate their allegations, while referring to an order dated 18.3.2015 passed by this Court in CWP No.14919 of 2011 (Annexure P-5), falls flat, because the same seems to be based on false imagination of the applications. Such an imaginary apprehension of the applicants is wholly misconceived as the same has no legs to stand.

Similarly, Civil Revision No.3388 of 2014 between these very parties arising out of the above-said suit for specific performance was also not conducted by either of the learned counsel whose names have been mentioned by the applicants in paras 3 to 5 of the present transfer application. However, from the perusal of the record of the case, it has become crystal clear that the applicants have not approached this Court with clean hands. In this regard, less said is better. There cannot be any doubt and no one should have any doubt in this regard that the courts of law can not be taken for a ride nor any one can be permitted to misuse the process of court. Instant transfer application certainly amounts to an attempt on behalf

of the applicants to misuse the process of court with a view to achieve their ulterior motive. It is the pious duty of every citizen of the country to pay due respect to the law of the country and also the justice delivery system. The Hon'ble Supreme Court, while considering the object of transfer of suits in its celebrated judgment in the case of **Dr.Subramaniam Swamy v. Ramakrishna Hegde, 1990(1) SCC 4** made the following observations which can be gainfully followed in the present case, read as under:-

“Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wider amplitude. Under the present provisions the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. 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.”

While reiterating its view expressed in **Dr.Subramaniam Swamy's** case (supra), the Hon'ble Supreme Court made the following observations in paras 14 and 15 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and others, 2008(3) SCC 659**, which aptly apply to the present case and the same 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.

*In **Maneka Sanjay Gandhi v. Rani Jethmalani, (1979)2 SCR 378**, this Court stated :*

"Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case".

(emphasis supplied)"

Again Hon'ble the Supreme Court in **Jaswant Singh's** case (supra) held as under:-

“Thereafter, the appellant as already noticed, filed a transfer petition in this court which was dismissed on 30.8.1993. The transfer petition like the application (supra) cast aspersions on the learned Judge in the discharge of his judicial functions and had the tendency to scandalise the Court. It was an attempt to browbeat the learned Judge of the High Court and cause interference in the conduct of a fair trial. Not only are the aspersions derogatory, scandalous and uncalled for but they also tend to bring the authority and administration of law into disrespect. The contents of the application seeking stay as also of the transfer petition, bring the court into disrepute and are an affront to the majesty of law and offend the dignity of the Court. The appellant is an advocate and it is painful that by filing the application and the petition as a party in person, couched in an objectionable language, he permitted himself the liberty of indulging in an action, which ill behoves him and does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbecoming for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a licence thereby to commit contempt of the court by intimidating the Judges or scandalising the Courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the Courts and for

upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language, do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

Reverting to the peculiar fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the judgments referred to hereinabove, this Court feels no hesitation to conclude that the applicants have made an attempt to overreach the Court which cannot be permitted under any circumstances. The allegations levelled by the applicants have been found to be totally frivolous and baseless. Applicants have not even tried to substantiate their allegations levelled in the present transfer application, during the course of hearing before this Court.

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 instant transfer application is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

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

30.3.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE