

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.801 of 2015 (O&M)

Date of decision: 15.03.2016

M/s Sardar Sons Cloth Marchant and others

... Applicants

Vs.

Daya Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. G.S. Bhatia, Advocate
for the applicants.

Mr. Anil Kumar Garg, Advocate
for respondent No.1.

Mr. Sunny Singla, Advocate
for respondents No.2 & 3.

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)

Applicants seek transfer of the rent petition titled as Daya Rani and others Vs. M/s Sardar Sons Cloth Merchant and others from the Court of learned Rent Controller, Malerkotla to some other Court of competent jurisdiction outside District Sangrur.

Notice of motion was issued and pursuant thereto, reply has been filed on behalf of the respondents.

Heard learned counsel for the parties.

Learned counsel for the applicants places reliance on the following judgments, in support of his contentions for transfer: -

1. *M/s Assa Steels and anr. Vs. Veena Rani Jain and ors., 1993 (1) RCR (Rent) 436.*
2. *Nikhil Sharma Vs. A.N. Bhardwaj, 2001 (1) RCR (Civil) 76.*
3. *Bina Rani Vs. Raj Kumar, 1992 (1) CurLJ 368.*
4. *Yoginder Sarin Vs. Varinder Kumar Sarin, 1993 (1) RRR 492.*

On the other hand, learned counsel for the respondents placed reliance on the judgments of this Court in **Gurnam Singh and another Vs. Amandeep Singh and others, 2005 (2) RCR (Civil) 314, DAV College, Hoshiarpur Society (Regd.) and another Vs. D.M. Sharma and others, 2005 (1) RCR (Civil) 71** and order dated 08.02.2016 passed by this Court in **TA No.85 of 2016 (Angroori Devi Vs. Jasmer Singh and others)**, in support of their arguments.

So far as the judgments relied upon by learned counsel for both the parties are concerned, there is no dispute about the observations made therein. It is the settled proposition 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 additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Learned counsel for the respondents have also argued that there are more than 150 Advocates at Malerkotla. Similarly, about 150 Advocates

at Dhuri and more than 400 Advocates are practising at Sangrur. He also refers to a Power of Attorney (Annexure R-1) at page 37 of the paper book. There could not be any dispute about the number of learned members of the bar at all the three places, but learned counsel for the respondents have not said anything in the reply filed on behalf of the respondents, about the genuineness of certificates issued by learned members of the bar from all the three places namely Malerkotla, Dhuri as well as Sangrur. In this view of the matter, arguments raised by learned counsel for the respondents have been found wholly misplaced and the same cannot be accepted.

However, so far as the peculiar fact situation obtaining in the instant case is concerned, arguments raised by learned counsel for the applicants have been found worth acceptance. A bare combined reading of as many as 06 certificates contained in Annexure P-3 (Colly.) issued by different members of the bar at Malerkotla, Dhuri and Sangrur would show that they have expressed their inability to appear on behalf of the applicants for conducting this rent petition. The learned Advocates have expressed their inability, because respondent No.2 was one of their colleagues. These certificates issued by all the six learned members of the bar have gone undisputed and uncontroverted on record at the hands of the respondents. In this view of the undisputed fact situation, this Court is of the considered opinion that the applicants may face a genuine difficulty to engage the learned counsel of their choice. Having said that, this Court is of the view that it would be in the interest of justice to transfer the abovesaid rent petition from Malerkotla to Ludhiana. It is so said because the justice is not only to be done but it should also appear to have been done.

The Hon'ble Supreme Court, while considering the scope of a transfer petition, in the case of **Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani, 1979 CriLJ 458**, observed as under: -

“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 attendance 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, deliberating on an identical issue, in the case of **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**, 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)”

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in cases referred to hereinabove, it is unhesitatingly held that with a view to strike a balance between the parties to do complete and substantial justice, it is imperative for this Court to order transfer of the abovesaid rent petition from Malerkotla to Ludhiana, so as to grant equal opportunity to both the parties.

So far as the distance between Malerkotla and Ludhiana is concerned, both the parties would be at par to cover the same distance. Thus, keeping in view the peculiar facts and circumstances of the case noticed hereinabove and without commenting anything further in this regard, including on the merits of the case, the instant application deserves to be accepted and the same is hereby allowed. Rent petition titled as Daya Rani and others Vs. M/s Sardar Sons Cloth Merchant and others, pending before the learned Rent Controller, Malerkotla is ordered to be transferred to the Court of learned Rent Controller, Ludhiana.

Accordingly, learned District Judge, Sangrur is directed to send the complete record of the abovesaid rent petition to the learned District Judge, Ludhiana at an early date and in any case within a period of one month from the date of receipt of certified copy of this order. Learned District Judge, Ludhiana is also directed to assign the case to the learned Court of competent jurisdiction for its early decision, in accordance with law.

With the abovesaid observations made and directions issued, present application stands disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

15.03.2016
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