

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12795 OF 2017

Keshavsingh Dwarkadas Kapadia	...Petitioner
<i>Versus</i>	
Kunverji Nanji Gala & Ors	...Respondents

Mr VA Thorat, Senior Advocate, i/b Rajesh S Patil, for the
Petitioner.
Mr VP Sawant, i/b Rochi & Rochi, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 28th November 2017

PC:-

1. **Rule.** By consent, rule is made returnable forthwith.

2. This is an unfortunate case and there is a complete avoidable controversy that pertains to the exercise of powers by the Chief Judge of the Court of Small Causes to “transfer cases”, and the assignment of RAE Suit No. 21/30 of 2012 to a particular Judge.

3. I find that in these papers there is at least a hint or an indication of one of the parties having expressed a view in relation to the trial Judge. That is not a reason to order a transfer, even if there is such a power, which there is not. Otherwise, the entire system of

administration of justice will come to a halt once Judges can be forced into recusal simply by a party making an allegation.

4. This was, however, not that kind of case.

5. It seems that contrary to an existing practice note, the application was for retention of the matter before a particular Judge. The practice note, correctly read, said this could be done only in a narrow set of circumstances, and demonstrably these circumstances did not obtain in the present case. The trial having concluded, final arguments were to begin. It is true that the matter had been called for hearing, but those final arguments were far from concluded on either side. A change of assignment intervened and it was then that this application for transfer of the case came to be made, effectively asking that the case be retained before the Judge in question.

6. I have no manner of doubt that the Judge in question merely took whatever was assigned to that Court, and this order is therefore no reflection on the Judge in question. Indeed, the Judge could not have done otherwise than to take up the work assigned. It is precisely to protect and insulate that Judge, having regard to the trajectory of the matter, that I now direct the Chief Judge to assign it to some other Court that has sufficient time.

7. At the cost of repetition, this direction is necessary not because there is the slightest substance to any allegation against the Judge but to ensure that there is no scope for controversy in this matter going ahead.

8. A copy of this order may please be communicated to the trial Judge in question as well.
9. Rule is made absolute in these terms. No costs.

(G. S. PATEL, J)