

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 16.03.2017

1. TA No.685 of 2016

Jahanjit Kaur and others

... Applicants

Vs.

Kanchanjit Singh

... Respondent

2. TA No.113 of 2017

Jahanjit Kaur and others

... Applicants

Vs.

Kanchanjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.K. Khunger, Advocate
for the applicants.

Mr. N.S. Sodhi, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical transfer applications bearing TA No.685 of 2016 and TA No.113 of 2017, are being decided together, vide this common order, as both these transfer applications are arising out of similar set of facts and between the same parties.

Applicants, by way of these two transfer applications under Section 24 of the Code of Civil Procedure (for short 'CPC'), seek transfer of the civil suit for declaration and permanent injunction filed by the respondent titled as Kanchanjit Singh Vs. Jahanjit Kaur and others and Civil Misc. Appeal

No.70 of 2016 filed by the applicants themselves titled as Jahanjit Kaur and others Vs. Kanchanjit Singh from Sri Muktsar Sahib to Bathinda.

Notice of motion was issued and in the meantime, further proceedings before the learned Courts below were stayed.

Replies filed on behalf of the respondent, in both these transfer applications, in the Court today, are taken on record and copies thereof have been supplied to learned counsel for the applicants.

Heard learned counsel for the parties.

It has gone undisputed before this Court that applicant No.2 is a senior citizen and respondent is his son. Since the relations between father and son were not cordial, applicant No.2 started living with his daughter at Bathinda. This is one of the reasons that applicants are seeking transfer of these two litigations from Sri Muktsar Sahib to Bathinda. No difficulty, except some apprehension, has been pointed out on behalf of the respondent, as to why he would not be in a position to pursue both these litigations at Bathinda. So far as the apprehension of threat to his life is concerned, respondent would always be at liberty to seek appropriate remedy from the authorities concerned, if necessity arises. However, applicant No.2 and his married daughter cannot be forced to go to Sri Muktsar Sahib to pursue the litigation imposed on them by the respondent. Distance between Sri Muktsar Sahib and Bathinda is more than 50 kilometers. Applicant No.2, who is pursuing these litigations, is about 70 years of age and it would be very difficult for him to go to Sri Muktsar Sahib to pursue the abovesaid litigations.

In view of the abovesaid undisputed fact situation of the cases in hand, this Court feels no hesitation to conclude that it is just and expedient to

transfer both the abovesaid cases from Sri Muktsar Sahib to Bathinda. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicants and against the respondent. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicants to go from Bathinda to Sri Muktsar Sahib to pursue the litigations.

The abovesaid view taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**. The relevant observations made by the Hon'ble Supreme Court in its judgment in **Dr. Subramaniam Swamy's** case (supra), which can be gainfully followed in the present case, read 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 cases in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that applicants are entitled for getting both the abovesaid cases transferred from Sri Muktsar Sahib to Bathinda, so as to enable them to pursue the litigations without facing any undue hardship or harassment at the hands of the respondent. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. If the applicants are forced to go from Bathinda to Sri Muktsar Sahib, it would amount to denial of justice to them. Thus, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, this Court is of the considered view that it would be just and expedient to transfer both the abovesaid cases from Sri Muktsar Sahib to Bathinda.

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 both these transfer applications deserve to be accepted and the same are hereby allowed. Civil suit for declaration and permanent injunction filed by the respondent titled as Kanchanjit Singh Vs. Jahanjit Kaur and others and Civil Misc. Appeal No.70 of 2016 filed by the applicants themselves titled as Jahanjit Kaur and others Vs. Kanchanjit Singh are ordered to be transferred from Sri Muktsar Sahib to Bathinda.

Accordingly, the learned District Judge, Sri Muktsar Sahib is directed to send complete record of both the abovesaid cases to the learned District Judge, Bathinda at an early date but in any case within a period of one month from the date of receipt of certified copy of this order.

The learned District Judge, Bathinda is also directed to assign these cases to the learned Courts of competent jurisdiction, for early decision thereof, in accordance with law.

With the abovesaid observations made and directions issued, both these transfer applications stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.03.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No