

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

**TA No.945 of 2016
Date of decision:19.1.2017**

Madhur Gupta

...Applicant

Versus

Narender Gupta

...Respondent

TA No.946 of 2016

Sarika Gupta

...Applicant

Versus

Narender Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Amrita Nagpal, Advocate for
Mr.Lokesh Sinhal, Advocate for the applicant(s).

Mr.Ashish Gupta, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical transfer applications, filed under Section 24 of the Code of Civil Procedure, seeks transfer of two civil suits filed by the plaintiff-respondent from Nuh (Mewat) to Gurgaon.

Notice of motion was issued.

Heard learned counsel for the parties.

The only argument raised by the learned counsel for the applicant(s) in both these cases is that the learned trial Court is proceeding expeditiously to decide the civil suits. She also submits that due opportunity is not being granted to the defendant-applicant to put up his best case before the court. In support of her above-said twin contentions,

learned counsel for the applicant(s) submits that since plaintiff-respondent is a practising lawyer at Nuh, he is influencing the court proceedings. She prays for allowing both these transfer applications.

Per contra, learned counsel for the respondent-plaintiff vehemently contended that though the respondent is an Advocate but owing to his age and ill health, he had already left his active practice. He comes to the Court as and when necessity arises but with the help of crutches, because he is unable to move comfortably. In such a situation, learned counsel for the plaintiff-respondent submits that allegation levelled by the applicant is factually incorrect and there is no scope of influencing the court proceedings, at the hands of the plaintiff-respondent. He further submits that since plaintiff evidence is going on, there is no scope of leveling this allegation that defendant-petitioner has not been granted due opportunity to put up his case before the court because his evidence is yet to start. He prays for dismissal of these transfer applications.

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 keeping in view the peculiar facts and circumstances of the case noticed hereinabove, both these transfer applications are liable to be dismissed, because no case for transfer of civil suits from Nuh (Mewat) to Gurgaon has been made out.

Transfer application like the present one cannot be allowed just at the asking of an unsatisfied litigant and that too on the basis of flimsy grounds. It is so said because in the cases in hand, applicants have failed to substantiate any of their allegation. Learned counsel for the respondent has

been found justified in contending that since the plaintiff-respondent is an old person not enjoying good health, he had already left his active practice and comes to the court with the help of crutches as and when dire necessity arises, there would be no scope of influencing the court proceedings by him.

The argument raised by learned counsel for the applicant(s) that the learned trial Court is proceeding expeditiously has also been found wholly misplaced for the reason that early disposal of litigation is the need of hour. Again, the argument that petitioner-defendant is not being granted due opportunity to defend himself has been found wholly misconceived for the reason that evidence of the defendant-petitioner is yet to start. Having said that, this Court feels no hesitation to conclude that both these transfer applications are based on factually incorrect allegation and the same are liable to be dismissed for this reason as well.

The 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 Jafferi, 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 above-said law laid down by the Hon'ble Supreme has also been followed by this Court in order dated 16.03.2016 passed in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal) and TA No.797 of 2015 (Jagroop Kaur Vs.Varinder Singh Bhela @ Tony) which, in turn, were based on the judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court.

Reverting to the facts and circumstances of the present case and respectfully following the law laid down by the Hon'ble Supreme Court and different High Courts, including this Court, in the cases referred to hereinabove, it is unhesitatingly held that the applicants failed to make out a case for transfer of above-said civil suits.

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 are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out

Resultantly, with the above-said observations made, both the transfer applications stand dismissed, however, with no order as to costs.

19.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No