

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.954 of 2016

Date of decision: 16.03.2017

Kavita

... Applicant

Vs.

Ram Niwas and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the applicant.

Mr. K.S. Banyana, Advocate
for respondents No.1 & 2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicant, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of a Civil Suit No.907/15.11.2016 titled as Ram Niwas and another Vs. Kavita and others filed by respondents No.1 and 2 from Jhajjar to Karnal.

Notice of motion was issued on the ground that the applicant was 70% handicapped. Thereafter, further proceedings before the learned Court at Jhajjar were stayed.

Reply filed on behalf of respondents No.1 and 2 in the Court today, is taken on record and copy thereof has been supplied to learned counsel for the applicant.

Heard learned counsel for the parties.

A careful perusal of the record would show that although

applicant claimed herself to be 70% handicapped but respondents No.1 and 2, who are her former parents-in-law, are also senior citizens. As per the voluminous medical record (Annexure R-1/1 colly.), they are suffering from more than one ailments. It has also gone undisputed before this Court that since the applicant is working, she is not financially dependent on anybody. Under these undisputed facts and circumstances of the case, respondents No.1 and 2-senior citizens cannot be forced to come to Karnal from Jhajjar, because it would be very difficulty for them to travel such a long distance, particularly when they are not keeping good health. On the other hand, since the applicant has performed second marriage, her husband is there to support her. In this view of the matter, present one has not been found to be a fit case for transfer of abovesaid civil suit from Jhajjar to Karnal.

In view of the abovesaid undisputed fact situation of the case, this Court feels no hesitation to conclude that present transfer application is liable to be dismissed. It is so said because all the abovesaid undisputed facts clearly go in favour of respondents No.1 and 2 and against the applicant. In the circumstances of the case, it will not only be inconvenient but would be very difficult for respondents No.1 and 2 to go from Jhajjar to Karnal to pursue the abovesaid civil suit.

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)”

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

With the abovesaid observations made, present transfer application stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.03.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No