

In the High Court of Punjab and Haryana at Chandigarh

T.A.No. 214 of 2017(O&M)

Date of Decision: 25.7.2017

Sham Murari Mishra and others

---Applicants

versus

Savinalini Mishra and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.D.Sharma, Senior Advocate
with Ms. Shivani Sharma, Advocate
for the applicants

Mr. Kanwaljit Singh, Senior Advocate,
with Mr. Parunjeet Singh, Advocate
for respondent No. 1

Rekha Mittal, J.

CM No. 15275-CII of 2017

Prayer in this application is for permission to place on record
affidavit of petitioner No. 1 alongwith documents Annexures P-14 to P-17.

Notice of the application to counsel opposite.

Counsel for the non-applicant-respondent No. 1 has got no
objection.

Heard.

Allowed as prayed for. Annexures P-14 to P-17 are taken on
record subject to just exceptions.

T.A. No. 217 of 2014

The applicants pray for transfer of Civil Suit No. 348/2017 titled “Savinalini Mishra vs. Janesh Mishra and others” pending in the Court of Additional Civil Judge (Senior Division), Amritsar to a court of competent jurisdiction outside the State of Punjab.

The present litigation is the result of marital disharmony between respondent No. 1 and her husband Janesh Mishra who has been residing in United States of America. Janesh Mishra son of petitioners Sham Murari and Shashi Mishra filed proceedings for divorce in Superior Court of California, County of Los Angeles. On 26.9.2015, a decree of dissolution of marriage between respondent No. 1 and respondent No. 2 (proforma) was passed resulting in termination of marital or domestic partnership between the couple. Respondent No. 1 has challenged the decree dated 26.9.2015 by way of civil suit pending in the Court at Amritsar.

Mr. S.D.Sharma, Senior Advocate, counsel for the applicants has submitted that father of respondent No. 1/plaintiff was earlier Deputy Advocate General, Punjab and he is now practicing as an Advocate in the Punjab and Haryana High Court. He remained office bearer of the District Bar Association, Amritsar, therefore, no lawyer practising at Amritsar is ready to accept the brief and defend the proceedings on behalf of the petitioners. It is further submitted that Brij Mohan Vinayak, father of respondent No. 1 is wielding lot of influence in Amritsar that has created apprehension in mind of the applicants that in case the proceedings are allowed to continue at Amritsar, they may not be able to defend the proceedings effectively. To substantiate his contention, he has invited

attention of the court to a news item that appeared in “The Tribune” Chandigarh dated 23.11.2010 (annexure P-14) wherein the aspirants from Punjab for the All-India Bar Examination scheduled to take place in March next year (meaning thereby in the year 2011) have conveyed their gratitude to the efforts of Amritsar based Advocate B.M.Vinayak and Vice Chairman of the BCI's executive committee.

Counsel appearing for respondent No. 1, on the contrary, has submitted that the present application is nothing but an effort to delay progress of trial as respondent No. 1/plaintiff has challenged an ex parte decree of divorce obtained by son of petitioners No. 1 and 2, in absence of respondent No. 1 from U.S.A. It is further argued that main plank of the petitioners for seeking transfer of the case is pleaded in para 16 but the allegations raised therein are incorrect as Sh. Brij Mohan Vinayak was neither President of the District Bar Association, Amritsar nor he was a member of the Bar Council, Punjab and Haryana High Court. It is argued with vehemence that plea of the applicants that Sh. N.P.Sharma, Advocate of Amritsar refused to accept the brief on the ground that daughter of Sh. B.M.Vinayak is involved in the litigation gets falsified and belied in view of a communication received from Sh. N.P.Sharma, Advocate and appended as an annexure with the reply filed by respondent No. 1. According to counsel, Sh. B.M.Vinayak father of respondent No. 1 was earlier working as Deputy Advocate General, Punjab but now he and his son are practicing as Advocates in the Punjab and Haryana High Court. Further submitted that as Sh. B.M.Vinayak is practicing at Chandigarh, there is no question of his wielding any influence at Amritsar.

I have heard counsel for the parties and perused the paper book.

Before advertng to the submissions made by counsel for the parties, it is appropriate to note that the applicants have prayed for transfer of the civil suit to a Court of competent jurisdiction outside the State of Punjab. This Court is not competent to allow inter State transfer of cases as jurisdiction in this regard lies with Hon'ble the Supreme Court of India.

To be fair to the applicants, during the course of hearing, counsel for the applicants has made a submission that the civil suit may be transferred to a Court at Chandigarh or Jalandhar, Ludhiana etc.

The main stake of the applicants for transfer of the case from Amritsar is pleaded in para 16 of the application. A relevant extract therefrom reads as follows:-

“Petitioner No. 1 with the help of the brother-in-law of Sh. Padam Parkash, who is also working in the Punjab Vidhan Sabha as a Reporter contacted Sh. N.P.Sharma, Advocate, Chamber No. 133-B District Courts, Amritsar for engaging him to defend them in the suit. However, Sh. N.P.Sharma, Advocate refused to accept the brief on the ground that daughter of Sh. Brij Mohan Vinayak, who remained the President of the District Bar Association, Amritsar and also a Member of the Bar Council Punjab and Haryana is

involved. Thereafter, petitioner No. 1 contacted Shri Vijay Pal Singh, Advocate, Chamber No. 42-B, Amritsar but he also declined to accept the case. Some other Advocates were also approached along with Shri Harish Langar, brother of Shri Padam Parkash for defending the case but they also refused to accept the case on the ground that the daughter of their colleague is involved.”

Counsel for the applicants is not in a position to refute contention of respondent No. 1 that her father Sh. Brij Mohan Vinayak neither remained President of the District Bar Association, Amritsar nor a member of Bar Council of Punjab and Haryana High Court, Chandigarh. This fact creates a serious doubt in the version that Sh. N.P.Sharma, Advocate refused to accept the brief on the alleged ground. Not only this, contesting respondent filed reply to the petition controverting allegations raised by the applicants. A certificate issued by Sh. N.P.Sharma, Advocate (Annexure R-1/3) has been filed with the reply. The said certificate under the signatures of Sh. N.P.Sharma, Advocate, District Courts, Amritsar reads as follows:-

“Shri Sham Murari Mishra contacted me for consultation with regard to civil suit titled as “Savanalini Mishra vs. Janesh Mishra & others” pending in the Court of Shri Yukti Goyal, Additional Civil Judge (Senior Division), Amritsar;

but he never wanted to engage me as his counsel in said case.”

This document demolishes plea of the applicants that Sh. N.P.Sharma, Advocate refused to accept the brief much less for the reasons pleaded by the applicants. Nothing has been pleaded by the applicants as to why Sh. Vijay Pal Singh, Advocate, Amritsar declined to accept the case. The applicants have not even mentioned the names of other Advocates to whom they approached for availing their services as their (applicants) counsel. Under the circumstances, the applicants have failed to substantiate their contention that in case the civil suit is allowed to proceed in a Court at Amritsar, the applicants would be deprived of services of an Advocate to defend them in the case.

Counsel for the applicants, in order to substantiate his plea with regard to influence of Sh. Brij Mohan Vinayak, Advocate father of the respondent/plaintiff has referred to a news item published in “the Tribune” dated 23.11.2010. Firstly, the matter mentioned in the news item pertains to seven years earlier. This apart, benefit of permission to write All India Bar Examination in Punjabi would be available to all aspirants from Punjab and not only the aspirants from Amritsar, therefore, the applicants cannot derive any advantage to their contention from document Annexure P-14 for transfer of case to any District of Punjab or at Chandigarh. As Sh. Brij Mohan Vinayak and his son are practicing at Chandigarh, if they really want to misuse

their position, they would be in a better position to wield their influence at Chandigarh. In this view of the matter, plea of the applicants raised in para 16 of the application is unfounded and liable to be rejected.

No other point has been raised.

For the foregoing reasons, finding no merit, the application fails and is accordingly dismissed.

(Rekha Mittal)
Judge

25.7.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No