

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.367 of 2017

Date of decision: 25.05.2017

Deepak

... Applicant

Vs.

Mable (minor) and others

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashish Gupta, Advocate
for the applicant.

Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for respondent No.1.

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 MACT case No.112/2015 titled as Mabel (minor) Vs. Ashok Kumar and others (Annexure P-2) from Panipat to Karnal.

Notice of motion was issued and in the meantime, learned Court below was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the applicant and respondent No.1 have filed two separate MACT cases, which are arising out of same accident in which the death of wife of the applicant-Deepak has taken place. It is also not in dispute that the application under Order 1 Rule 10 CPC has been filed by respondent No.1 before the learned MACT, Karnal in the MACT case filed by the applicant. It goes without saying that set of evidence

in both the cases would be identical. In case both the cases are not ordered to be heard together by the learned MACT, Karnal, then there would be every likelihood of rendering different judgments by learned MACT, Karnal as well as learned MACT, Panipat.

Keeping in view the abovesaid undisputed facts and circumstances of the case and with a view to avoid multiplicity of litigation and also to avoid inconsistent orders by the learned MACT, Karnal as well as learned MACT, Panipat, it would be in the interest of justice to transfer the abovesaid MACT case No.112/2015 titled as Mabel (minor) Vs. Ashok Kumar and others to the learned MACT, Karnal, so as to secure the ends of justice.

The view that has been 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 **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 case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in **Dr. Subramaniam Swamy's** case (supra), it is unhesitatingly held that applicant is entitled for getting the abovesaid MACT case transferred from Panipat to Karnal, so as to avoid unwarranted harassment to both the parties. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. 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 the abovesaid MACT case from Panipat to Karnal.

At this stage, learned counsel for the applicant has pointed out that now the MACT case number before the learned MACT, Panipat is

387/2015, as per information gathered by him from the internet.

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 instant transfer application deserves to be accepted and the same is hereby allowed. MACT case No.387/2015 (earlier No.112/2015) titled as Mabel (minor) Vs. Ashok Kumar and others (Annexure P-2) is ordered to be transferred from Panipat to Karnal.

Accordingly, the learned District Judge, Panipat is directed to send complete record of MACT case No.387/2015 (earlier No.112/2015) to the learned District Judge, Karnal 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, Karnal is also directed to assign the abovesaid MACT case to the same learned Court of competent jurisdiction, which is already seized of the matter, for their early decision, in accordance with law.

Parties through their counsel are directed to appear before the learned Court at Karnal on 06.07.2017.

With the abovesaid observations made and directions issued, present transfer application stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

25.05.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No