

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

TA No. 445 of 2017(O&M)

Date of decision: 24.8.2017

K.K. Rice & General MillsApplicant

VERSUS

M/s Sharma Commission Agent and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Dheeraj Mahajan, Advocate for the applicant.

Mr. A.K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate for the respondents.

REKHA MITTAL, J.

CM No.17568-CII of 2017

Application is allowed as prayed for.

Reply on behalf of respondent is taken on record.

Disposed of accordingly.

TA No.445 of 2017

The applicant prays for transfer of Civil Appeal No.2688 of 2015 titled **M/s Sharma Commission, Agent and another Vs. K.K. Rice and General Mills** from the Court of Sh. Rajnish Garg, Additional District Judge, Gurdaspur to a court of competent jurisdiction outside District Gurdaspur.

M/s Sharma Commission Agent and another filed a suit for recovery wherein the applicant-Mill filed a counter claim for recovery of Rs.85 lakhs. The suit filed by the plaintiff/respondent(s) was dismissed but the counter claimant was held entitled to recover Rs.85 lakhs with interest

at the rate of 9% per annum from the date of issuance of cheque dated 20.03.2005 till the date of decree and further interest at the rate of 6% per annum from the date of decree till realisation vide judgment and decree dated 21.10.2015. The respondent filed statutory appeal before the District Judge, Gurdaspur wherein notice was issued to the applicant/respondent on 09.12.2015. Along with the appeal, an application for stay against the decree was also filed.

The applicant has sought transfer of the case from the Court concerned in view of the allegations raised in para 4 of the petition. Counsel for the applicant, in line with the averments raised in para 4 of the petition, has submitted that the applicant submitted before the Appellate Court that execution of the decree may be stayed subject to payment of half of the decretal amount or by directing the appellant to furnish bank guarantee of the decretal amount during pendency of the appeal. When the case was fixed for arguments on stay application on 24.04.2017, the applicant was forced by the Presiding Officer to suffer a statement that he did not have any objection for grant of interim stay till decision of the appeal. It is further submitted that the respondents started claiming openly that they will get the appeal as well as stay application decided in their favour and the declaration made by the respondents along with conduct of Presiding Officer caused serious apprehension in the mind of the applicant that he will not get justice from the Court, therefore, appeal is liable to be transferred to some other court. In addition, it has been submitted that the applicant submitted a complaint dated 25.04.2017 which was marked to the Inspecting Judge of District Gurdaspur and copy of the same is Annexure P-3. The last submission made by counsel is that in the light of principle that justice should not only be done but it should appear to have

been done, the appeal may be withdrawn from the Court of Sh. Rajnish Garg, Additional District Judge, Gurdaspur and assigned to a Court of competent jurisdiction either at Gurdaspur or outside Gurdaspur.

Counsel for the respondent, on the contrary, has seriously contested claim of the applicant for transfer of the proceedings from the present Court to some other Court. It is argued with vehemence that transferring a case merely on the asking of an apprehensive litigant would not only lead to scandalising the Court but brow-beat the Presiding Officer and it amounts to direct interference in the independent and fair administration of justice. It is further argued that the allegations raised by the applicant do not get substantiated from the facts on record rather get falsified from the averments in para 3 of the application as the applicant has averred that the case remained pending for consideration on stay application and the same was never effectively pressed by the respondents. It is strenuously argued that if the respondents did not press their claim for stay, where was the occasion for the Appellate Court to raise an issue much less asking or forcing the applicant to record a statement raising no objection for grant of stay without furnishing a bank guarantee.

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

Perusal of the zimini order recorded on 24.04.2017 would make it evident that on that day, application for grant of stay was not fixed for consideration. A relevant extract from the order reads as follows:-

"Present:- Sh. Balraj Mohan, Adv. counsel for the appellants.
Sh. K.M. Singh, Adv. counsel for respondent.

Case not listed for arguments for today. Now for
arguments to come up on 28.04.2017.

(Rajnesh Garg)

Additional District Judge
(UID No.PB0088)

Date of order 24.04.2017
(Rohit Tandon)
Stenographer III
Next Date: 28.04.2017.”

As has been pointed out by counsel for the respondent, the applicant in para 3 of the application has averred, reads as follows;-

"....the same was listed for hearing on 09.12.2015 and while admitting the appeal, notice regarding the stay application was issued and petitioner concern filed reply to the stay application on the adjourned date. Copy of the reply dated 21.12.2015 is annexed herewith as **Annexure A-2**. Thereafter, the case remained pending for consideration of the stay application and the same was never effectively pressed by the respondents. It is pertinent to mention here that simultaneously the execution proceedings were pending as the money decree was not stayed by the lower appellate court and the warrant of attachment of the property of the respondent was issued in the execution proceedings."

It is difficult to digest much less to accept that if respondent/JD did not effectively press for grant of stay for the past 1½ years and on 24.04.2017 the proceedings were not listed for hearing of stay application, where was the occasion for the Court to ask much less force the applicant to make a statement allowing stay against execution of the decree without furnishing of bank guarantee. This fact alone is sufficient to create a doubt in the plea raised by the applicant.

The applicant has expressed his apprehension on the basis of alleged conduct of the Court on 24.04.2017 followed by a representation by the respondent/JD that he will get the appeal and stay application decided in his favour. Again, it is difficult to fathom that if a litigant is in a position to approach the judicial officer for getting some favourable order, he would make it public at the risk of allowing a secret to be disclosed and providing an opportunity to the contesting party to take recourse to

appropriate proceedings for transfer of the case from the court concerned. The allegations raised by the applicant, in this regard, are against prudent human conduct, thus, cannot be accepted.

Taking a cumulative view of the facts and circumstances discussed hereinbefore, when examined in the light of submissions made by counsel for the respondent that transferring the case merely on the asking of an apprehensive litigant would not only scandalize the Court but brow-beat the Presiding Officer, I find myself unable to accept submissions of the applicant/petitioner for transfer of the case from the Court of Sh. Rajnish Garg, Additional District Judge, Gurdaspur to other Court of competent jurisdiction at Gurdaspur or outside Gurdaspur.

For the foregoing reasons, the petition fails and is accordingly dismissed.

AUGUST 24, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no