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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TR.P.(C.) 44/2017

DIBYENDU BHATTACHARJEE Petitioner
Through Mr.Saurabh Prakash with
Mr.Kunal Gosain, Advocates.
versus

BCH ELECTRIC LTD Respondent
Through Mr.Gauhar Mirza with
Mr.Shivang Singh, Advocates.

% Date of Decision: 9th November, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed under Section 24 of the Code of Civil Procedure for transfer of Civil Suit No.59168/2016 titled *Mr.Dibyendu Bhattacharjee Vs. BCH Electric Ltd.* from the Court of Ms..Rekha, learned ADJ, Patiala House Courts to this Court.
2. In the present petition, it has been averred that initially the petitioner had filed a joint suit with Mr.Pradeep Mehra and Mr.Suprio Mukherjee who also allegedly resigned on the same date as the petitioner/plaintiff. Learned predecessor of this Court directed the said three plaintiffs to file separate suits as it was of the opinion that though a common grievance had been raised that the plaintiffs'

resignations were not voluntary, yet the averments as to how that result was brought about were different.

3. Learned counsel for the petitioner states that as the present petitioner and Mr. Pradeep Mehra and Mr. Suprio Mukherjee have a common grievance against the respondent and they all rely on same or similar evidence as well as the documents, common/similar/identical issues arise for consideration in all the three suits. Consequently, he prays that the present transfer petition be allowed.

4. On the other hand, learned counsel for the respondent states that as the present petitioner as well as Mr. Pradeep Mehra and Mr. Suprio Mukherjee have a separate story to tell, this Court should not transfer the said suit to this Court. He further states that if the present petition is allowed, it would amount to setting at naught the order passed by the learned predecessor of this Court on 19th September, 2016.

5. He further states that a transfer petition should be allowed only when the superior court is satisfied that the proceedings in one court constitute an abuse of the process or where some prejudice is caused to one of the parties or if a party feels that he is not likely to have a fair trial before a particular court. In support of his submission, he relies upon the judgment of Madras High Court in ***S. Kousalya Vs. P.K. Ilavarasan, P. Pugalandhi and N. Velmurugan, Manu/TN/1285/2008.***

6. Having heard the learned counsel for the parties, this Court is of the view that the power of the High Court to transfer any proceedings to itself is plenary and the grounds mentioned by the Madras High Court in ***S. Kousalya*** (supra) are only illustrative. It is pertinent to

mention that the powers under Section 24 CPC can be exercised by the Court even *suo moto*.

7. This court is also of the view that even if it is assumed that Section 24 CPC cannot be invoked for transfer of proceedings in the present case, this Court has the ample power under Article 227 of the Constitution of India to transfer such proceedings. The Punjab and Haryana High Court in ***Maharajkumar Gajbir Singh & Anr. Vs. His. Highness Maharaja Satbir Singh & Ors., 1968 Cri LJ 971*** has held as under:

“...Assuming that section 24 of the Code of Civil Procedure cannot be invoked for transfer of such proceedings, this Court has ample jurisdiction to transfer the case in exercise of its powers of superintendence under Article 227 of the Constitution.”

8. Since it is the case of the petitioner as well as Mr. Pradeep Mehra and Mr. Suprio Mukherjee that on acceptance of their resignations, just and proper terminal dues had not been paid to them by the same respondent, this Court is of the opinion that a number of common/similar/identical issues arise for consideration in all the three cases.

9. This Court is further of the view that the learned predecessor of this Court while passing the order dated 19th September, 2016 did not deal with the issue of transfer of the suit to the High Court. The order dated 19th September, 2016 was passed in the context of an application filed by the defendant under Order VII Rule 11 CPC. Consequently, the observations in the said order are not germane while deciding the present transfer petition.

10. In any event, as this Court is of the view that since a number of common/similar/identical issues arise for consideration in all the three suits, the Civil Suit No.59168/2016 is transferred to this Court to avoid any conflict of judgment and is directed to be heard by the same Court which is hearing CS(OS) Nos.1856/2015 and 577/2016 filed by Mr.Pradeep Mehra and Mr. Suprio Mukherjee respectively. This Court clarifies that the evidence led in the present case would not be read in the other case, but all three cases would be heard by the same court and judgment should be pronounced on the same day.

11. With the aforesaid directions, present transfer petition stands disposed of.

12. Registry is directed to summon Civil Suit No.59168/2016 to this Court and re-number the same.

13. The parties are given liberty to file their documents in the said suit within a period of two weeks.

14. List the Civil Suit No.59168/2016 after re-numbering it before the Joint Registrar along with CS(OS) Nos.1856/2015 and 577/2016 on 28th November, 2017.

MANMOHAN, J

**NOVEMBER 09, 2017
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