

\$~11

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

+ TR.P.(C.) 141/2016, CM No.41775/2016 (for stay)

S K SHARMA

..... Petitioner

Through: Mr. Ashish Sehrawat, Advocate

Versus

CHANDER PRAKASH ARORA & ANR

..... Respondents

Through: Mr. Atul Patni, Adv. for R1

Mr. Kunal Sharma, Adv. for R2/DDA

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

06.11.2017

%

1. Transfer, invoking Section 24 of the Code of Civil Procedure, 1908 (CPC), is sought of Suit No.798/2016 titled S.K. Sharma vs. Chandra Prakash Arora & Anr. from the Court of Ms. Rekha, ADJ, Patiala House Courts, New Delhi to the Court of Sh. Ajay Goel, ADJ, Rohini Courts, New Delhi.
2. Notice of the petition was ordered to be issued and the counsels for respondent No.1 and 2 appear.
3. Mr. Atul Patni counsel for respondent No.1 seeks adjournment on the ground of non-availability of Mr. Dileep Singh, stated to be the main counsel of the respondent No.1.
4. The said Mr. Dileep Singh, Advocate has not appeared on the earlier two dates. Even otherwise, Transfer Petitions cannot be kept pending. On enquiry, it is informed that the respondent No.1 is present in person before this Court.

5. The counsel for the petitioner has argued:

- (i) That the suit, of which transfer is sought, was earlier pending in this Court and on enhancement of minimum pecuniary jurisdiction of this Court was erroneously transferred to the New Delhi District on the premise that the respondent/defendant No.2 - DDA has its office within the said District.
- (ii) That the respondent/defendant No.2 – DDA is only a pro forma party.
- (iii) That another Suit filed by the petitioner/plaintiff against the respondent/defendant is already pending in the Court of Sh.Ajay Goel, Addl. Dist. Judge, Rohini Courts;
- (iv) That now Sh. Atul Kumar Garg, Addl. Dist. Judge has taken over the Court earlier presided by Sh. Ajay Goel.

6. A perusal of the Memo of Parties shows the respondent No.1 to be residing at Meerut and the earlier Suit being a Suit for permanent and mandatory injunction with respect to property No. 35, Pocket C3, Sector 11, Rohini, Delhi. The Suit, of which transfer is sought, has been filed for recovery of Rs.31 Lakhs and also for permanent and mandatory injunction with respect to the same property.

7. The reliefs of permanent and mandatory injunction are not such to which the provisions of Section 16 of the CPC will apply. Moreover, the Suit already pending in the Rohini Court is to restrain the respondent/defendant from making any unauthorized additions/alterations in the property and it prima facie appears that the said Suit should not even be put to evidence and should be disposed of by restraining the

respondent/defendant from making any unauthorized additions/alterations without obtaining permission in accordance with law.

8. The respondent No.1 on enquiry states that he comes from Meerut for each and every date of hearing and it is more convenient for him to attend dates of hearing in the Patiala House Courts than in the Rohini Court, to reach where he has to spend another one hour.

9. The counsel for the petitioner on enquiry, leaves it to the discretion of this Court.

10. In the facts and circumstances aforesaid, the need for transfer is not felt.

11. The Transfer Petition is dismissed.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 06, 2017
pk..