

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

CM No.24132-CII of 2018 in/and
CR No.852 of 2018
Date of Decision : 13.12.2018.

Upkar Singh

...Petitioner

Versus

Harparkash Kaur (deceased) through L.Rs. and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Ms. Kanwal S. Walia, Advocate for the petitioner.

Mr. J.S. Puri, Advocate for the respondents.

B.S.WALIA, J. (Oral)

CM No.24132-CI of 2018

Allowed as prayed for.

CR No.852 of 2018

1. Revision petition has been filed against order dated 25.01.2018 (Annexure P-1), whereby the application filed by the petitioner for transfer of appeal from the Court of the learned Addl. District Judge, Sangrur to any other Court of competent jurisdiction at Sangrur was dismissed.

2. The learned District Judge, Sangrur dismissed the said application on the ground that the allegations levelled were vague and without any basis, therefore, on the basis of such flimsy allegations, the appeal could not be transferred from one Court to another.

3. Brief facts of the case leading to the filing of the revision petition are that the petitioner had filed a civil suit against his mother

for a declaration that he was owner in possession of agriculture land as per details given in the head note of the plaint as also of the house mentioned therein. The aforesaid civil suit was dismissed. Thereafter, appeal was filed by the petitioner and during the pendency of the appeal, on account of death of respondent No.1 i.e. mother of the petitioner, an application was filed by respondent Nos.1 and 2 i.e. his sisters and daughter of deceased-Harparkash Kaur, for impleading them as legal representatives of their deceased mother Harparkash Kaur. In reply to the said application, the petitioner also claimed himself to be the legal heir of his mother-Harparkash Kaur being the son, therefore, also entitled to be impleaded as legal representative of deceased Harparkash Kaur.

4. The application filed by respondent Nos.2 and 3, was allowed on 08.09.2017 while the claim of the petitioner for being added as legal representative of his mother was rejected. Thereafter, the petitioner filed an application for transfer of the civil appeal pending before the court of the learned Addl. District Judge, Sangrur to any other Court of competent jurisdiction at Sangrur on the ground that during the pendency of the application for impleadment, his sisters had told him that they would not permit him to be impleaded as legal representatives of their mother and the Court vide its order dated 08.09.2017, impleaded respondent Nos.2 and 3 as legal representative of deceased Harparkashs Kaur. It was further mentioned that respondent No.2 had threatened the petitioner that she would get the appeal decided in their favour, therefore, he had no hope of getting

justice from the Court of the learned Addl. District Judge, Sangrur, where the appeal is pending adjudication.

5. In paragraph No.8 of the revision petition, it has been mentioned that a request was made before the Court of the learned Addl. District Judge, Sangrur by the counsel who was appearing on behalf of the petitioner for the first time (on account of earlier counsel having been changed by the petitioner) for an adjournment on the ground that he had to prepare the case besides transfer application had been moved before the learned District Judge, Sangrur, on which, the learned Addl. District Judge, Sangrur got furious and observed that he would dismiss the appeal and no adjournment would be granted but it was only after numerous requests that the matter was adjourned on an undertaking being signed by the petitioner that adjournment be granted or else he would argue the matter. Although the allegations as aforesaid were levelled to show the alleged bias of the learned Addl. District Judge, Sangrur but the fact remains that the adjournment was granted and the appeal was not dismissed. In paragraph No.9 of the revision petition it has been mentioned that the learned Addl. District Judge, Sangrur was in an apprehensive haste to dispose of the appeal filed by the petitioner-appellant despite the fact that older appeals were still pending. This aspect of the matter having been noted by the Hon'ble Coordinate Bench while issuing notice of motion, the petitioner was directed to file an affidavit giving details of cases alleged to be older matters and pending before the concerned Court. Despite the learned counsel for the petitioner stating that an affidavit was placed on record by way of moving CM and copy supplied to the learned counsel for the

respondent, yet there is no such application on record nor is learned counsel for the petitioner in a position to indicate the filing number, CM number, if any, placing affidavit on record. It is, thus, apparent that no affidavit has been filed on record in terms of directions of this Court dated 08.02.2018. However, photocopy of affidavit dated 23.10.2018 has been produced. Although the same is not in record yet the details of case mentioned therein are as under:-

Sr.No.	File No.	DOI	Title	Category
1.	11559/2013	24.08.2013	Mannawar vs.Satbir Hussain	Civil Appeal
2.	8018/2013	10.11.2013	State vs. Bansal	Session Case
3.	212/2014	29.04.2014	Gurjit Singh vs. State	Criminal Appeal
4.	304/2014	24.05.2014	Upkar Singh vs. Harparkash kaur	Civil Appeal

6. A perusal of the details given above reveals that petitioner has mentioned of two civil appeals, one session case and one criminal appeal. However, out of these four cases, 4th case is none other than the appeal filed by the petitioner himself on 24.05.2014 while the other cases are of 24.08.2013, 10.11.2013 and 29.04.2014. To my mind mere fact that there are one or two cases of period prior to the filing of the appeal by the petitioner which have not been decided would not in any way show any bias on the part of the learned Addl. District Judge, Sangrur in hearing the appeal filed by the petitioner that too which was adjourned on the request of the petitioner in order to enable the petitioner's counsel to prepare and to argue the matter as well as to enable the respondents to file reply to the application under Order 41 Rule 27 CPC.

7. Learned counsel for the petitioner while referring to the decision of Hon'ble the Supreme Court in State of West Bengal vs. Shivananda Pathak 1998 (5) SCC 513 contended that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done and that bias may be defined pre-conceived opinion or a pre-disposition or pre-determination to decide a case or an issue in a particular manner so much so that such pre-disposition does not leave the mind open to communication. Learned counsel also relies upon the decision of Hon'ble the Supreme Court in P.K. Ghosh vs. J.G. Rajput 1995 (6) SCC 744, to contend that in the facts of that case the Hon'ble Supreme Court was pleased to observe that the Hon'ble Judge should not have persisted in hearing the Contempt Petition in spite of the specific objection which could not be called unreasonable on the undisputed facts. The aforementioned observations were given by Hon'ble the Supreme Court in the light of the fact that the Hon'ble Judge hearing the Contempt Petition had earlier been the counsel for the contemnor. Lastly learned counsel has referred to the decision of Hon'ble Division Bench of this Court in Dr. A.K. Bakshi vs. Panjab University 2000 (1) RSJ 593 to contend that bias cannot be proved like a chemical reaction and it is a state of mind and has to be inferred from the circumstances of a case.

8. Per contra, learned counsel Mr. J.S. Puri, Advocate has referred to the decision of Hon'ble the Supreme Court in Usmangani Adambhai Vahora vs. State of Gujarat and another 2016 (3) SCC 370. The same was a case in which application for transfer had been moved and the learned Sessions Judge while hearing the application for

transfer of the case called for the remarks of the trial Judge which were given refuting the allegation qua his conduct. Besides nothing substantial was brought on record with regard to the allegations. In the circumstances, it was observed that the High Court could not have deduced that the learned trial Judge should have declined the trial solely because an accused had filed an application for transfer. It was observed that the learned trial Judge was not required to express his disinclination but was required under law to do his duty and not to succumb to pressure put by the accused by making callous allegation. Paragraph No.11 of the decision in *Usmangani Adambhai Vahora's* case (*supra*) is reproduced as under;-

11. In the instant case, we are disposed to think that apprehension that has been stated is absolutely mercurial and cannot remotely be stated to be reasonable. The learned single Judge has taken an exception to the remarks given by the learned trial judge and also opined about non-examination of any witness by him. As far as the first aspect is concerned, no exception can be taken to it. The learned Sessions Judge, while hearing the application for transfer of the case, called for remarks of the learned trial judge, and in such a situation, he is required to give a reply and that he has done. He is not expected to accept the allegations made as regards his conduct and more so while nothing has been brought on record to substantiate the same. The High Court could not have deduced that he should have declined to conduct the trial. This kind of

observation is absolute impermissible in law, for there is no acceptable reason on the part of the learned trial judge to show his disinclination. Solely because an accused has filed an application for transfer, he is not required to express his disinclination. He is required under law to do his duty. He has to perform his duty and not to succumb to the pressure put by the accused by making callous allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court haunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable. The High Court has gravely erred in this regard.

9. On query, learned counsel for the petitioner stated that order denying the claim of the petitioner for being impleaded as legal representative of his deceased mother Harparkash Kaur was not challenged by the petitioner. In the circumstances, the allegations of bias are nothing except a figment of imagination.

10. It is apparent that firstly the petitioner filed civil suit against his mother and having lost the case in the trial Court and finding himself on a shaky wicket before the learned Appellate Court leveled allegations of his sisters having threatened him that they would not allow him to be impleaded as legal representative of their deceased

mother-Harparkash Kaur and that they would get the appeal decided in their favour. However, there is no allegation as such against the learned Addl. District Judge, Sangrur. Simply because the petitioner was not impleaded as legal representative of his deceased mother does not prove any bias. Besides, as conceded by learned counsel for the petitioner, the petitioner never challenged the order rejecting his plea for impleadment. As regards the allegation that sister of the petitioner threatened him that they would get the appeal decided in their favour does not confer any cause of action so as to entitle the petitioner to seek transfer of the case.

11. Coming to the additional grounds taken by the petitioner in the revision petition. In paragraph No.8, the only apprehension for bias is on account of resistance to the adjournment prayed for on the ground of counsel having been changed as also request for time to prepare and to argue the case besides of a transfer application having been filed. Although the circumstances of the case did not warrant granting of any adjournment merely on the asking of the petitioner yet the learned Addl. District Judge, Sangrur, in the interest of justice, granted an adjournment, therefore, the aforementioned allegation is also without basis. The learned Addl. District Judge, Sangrur was under a duty to decide the case and it was only by taking a lenient view that the case was adjourned. Mere fact that three cases filed a few months prior to the appeal filed by the petitioner are also pending adjudication does not in any way reflect bias on the part of the learned Addl. District Judge, Sangrur in considering the appeal of the petitioner for decision.

The judgments cited by learned counsel for the petitioner have no

applicability in the facts and circumstances of the case. In fact the case is squarely covered by the decision of Hon’ble the Supreme Court in Usmangani Adambhai Vahora’s case (supra).

12. Accordingly, finding no merit in the revision petition, the same is dismissed.

(B.S.WALIA)
JUDGE

13.12.2018
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No