

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (Art. 227) No. 92 of 2018**

Ashok Tiwari, aged about 58 years, son of late Ramkesh Tiwari, occupation – Business, R/o. Village- Sarhari, P.S. Pratappur, District – Surajpur (C.G.)

**----Petitioner/defendant No.1**

**Versus**

1. Sunil Kumar Tiwari, aged about 42 years, son of Late Ramkesh Tiwari, R/o. Godhanpur, Nagar Ambikapur, Distt. Sarguja (C.G.) (plaintiff)

2. State of Chhattisgarh, through the District Collector, Surajpur (C.G.) (Defendant No. 2)

**---- Respondents**

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| For Petitioner             | : | Mr. Vivek Bhakta, Advocate.         |
| For Respondent No.1        | : | None appeared, though served.       |
| For Respondent No. 2/State | : | Mr. Vimlesh Bajpai, Govt. Advocate. |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**22/01/2019**

1. Respondent No. 1/plaintiff has filed civil suit No. 13-A/2016 against the petitioner/defendant for declaration of title, permanent injunction and possession before the Civil Judge, Class-I, Pratappur. During pendency of the aforesaid suit, the Plaintiff filed an application under Section 24 of the CPC before the District Judge, Surajpur for transfer of the aforesaid suit from Pratappur to any other court on the ground that Criminal Complaint No. 93/2017 {Sunil Tiwari Vs. Ashok Tiwari & two others} is also pending in the court of Judicial Magistrate, First Class, Pratappur and in that case, Presiding Officer is favouring the accused persons and, therefore, the respondent No. 1/plaintiff has reasonable apprehension in his mind that he will not get justice and he has also made complaint to this Court (Chhattisgarh High Court) against the said

Presiding Officer and in which Registrar (Vigilance), High Court of CG has already taken cognizance of it in the administrative side and, therefore, the Civil Suit be transferred from Pratappur to Civil Judge, Class-I, Surajpur.

2. On being asked by District Judge, Surajpur, the Civil Judge, Class I, Pratappur, District Surajpur has sent request letter to the District Judge, Surajpur stating that since the complaint has been made against him by plaintiff – Sunil Kumar Tiwari and he has also received memorandum dated 12<sup>th</sup> September, 2017 to this effect from the High Court of Chhattisgarh, therefore, for proper disposal of the suit, it should be transferred to any other court having jurisdiction to decide the suit in accordance with law.

3. Learned District Judge, by its impugned order dated 8.11.2017, held that since the complaint has been levied against the said Presiding Officer and he has recommended for transferring the civil suit from his Court (Pratappur) to any other court and, therefore, accepting that recommendation, the civil suit filed by the plaintiff is transferred from Pratappur to Civil Judge, Class I, Surajpur, against which instant writ petition has been preferred.

4. Learned counsel appearing for the petitioner would submit that since the requirement of Section 24 of the CPC is not available, therefore, that would not furnish the ground to transfer the civil suit merely on the apprehension of learned Presiding Officer of the Civil Court, Pratappur, order of transferring the suit must be based on valid and sufficient grounds.

5. I have heard learned counsel appearing for the petitioner and perused the impugned order with utmost circumspection.

6. The Petitioner has made application for transfer before this Court under Section 24 of the CPC. Section 24 of the CPC reads as under :-

*“24. General power of transfer and withdrawal : (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may, at any stage-*

- (a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or*
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and*
  - (i) try or dispose of the same; or*
  - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
  - (iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.*

*(2) Where any suit or proceeding has been transferred or withdrawn under Sub- section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.”*

7. The power under Section 24 is conferred on the High Court and the District Court and the power of transfer can be exercised by these Courts at any stage either to transfer a suit or appeal pending before itself to any other Court subordinate to it and competent to try the same or to withdraw any suit or appeal pending before any Court subordinate to it and to transfer it to any other competent Court or to try and dispose off the same by itself.

8. The Section itself does not indicate the circumstances and on what, all aspects the power of transfer can be exercised. But it is a settled legal principle that an element of bias on the part of the Presiding Officer as against any of the parties to the proceedings is a valid and justifiable ground enabling the affected person to seek for

transfer of the proceedings to any other Court.

9. The questions that falls for consideration is whether the respondent No.1/plaintiff has made out any valid or justifiable ground to seek transfer of proceeding to any other Court.

10. In case of **Ratanlal Vs. Suresh Kumar**<sup>1</sup>, the Madhya Pradesh High Court has clearly held that transfer can only be ordered when the party has reasonable apprehension that justice will be denied to him. Paragraph 12 of the report reads as under:-

“12. Transfer can only be ordered when the party has reasonable apprehension that justice will be denied to him. The mere fact that the party has suspicion in this regard would not constitute a valid ground for transfer. The fact that the Judge has taken a particular view in other case, is no ground for transfer because by arguments he may be persuaded to change his view. A judicial order passed by a Judge cannot legitimately be made the foundation for a transfer application. The proper remedy against it is by way of an appeal or revision.”

11. Likewise, in case of **Jagatguru Shri Shanakaracharya Jyotish Peethadhiswar Shri Swami Swaroopanand Saraswati Vs. Ramji Tripathi and others**<sup>2</sup>, the Division Bench of the Madhya Pradesh High Court has held as under:-

“11. The plaintiff, as arbiter litis, has a right to choose his own forum and that right should not be interfered with except on very strong grounds. The search should be for justice and the Court must be satisfied that justice could more likely be done between the parties by refusing to allow plaintiff to continue his suit in the forum of his choice. The onus of establishing sufficient grounds for the transfer lies heavily on the applicant. There is unanimity of opinion that preponderance of balance of convenience is of

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<sup>1</sup> AIR 1987 MP 178

<sup>2</sup> AIR 1979 MP 50

prime consideration for transfer of suit. So the convenience of the parties is a valid ground of transfer though there is no unanimity about it being a material ground for transfer”

12. In case of **Pushpa Devi Saraf and another Vs. Jai Narain Parasrampuriah and others**<sup>3</sup>, the Supreme Court has held as under:

“6. When a transfer petition is filed making such or similar allegations, the report if an when called for, should normally be confined to the allegations made against the impartiality or fairness of the Judge and not with respect to the correctness or other-wise of the orders passed by him. We are saying this because it appears that on the transfer petition being filed, the learned District Judge appears to have called for a report from the Presiding Officer. In his report, the Presiding Officer not only denies the imputations made against him but also explains and justifies the orders passed by him. This he did evidently because in the transfer petition, the correctness of some of his orders was questioned. In our opinion, a Presiding Officer of a court should not be put to such an explanation, barring exceptional circumstances.

7. Having heard the counsel for both the parties, we are of the opinion that the allegations in the transfer petition are not sufficient and do not warrant an order of transfer. We are satisfied that the learned Presiding Officer was only trying to hear the case expeditiously in pursuance of the order of this Court dated 14.8.1991.”

13. In the matter of **Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**<sup>4</sup>, their Lordships of the Supreme Court while dealing with the proceedings under Section 24 of the Code of Civil Procedure have held as under:-

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<sup>3</sup> (1992) 2 SCC 676

<sup>4</sup> (2008) 3 SCC 659

“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a consideration section of public interested in the litigation “interest of justice” demanding transfer of suit or appeal or other proceedings etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceedings. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a “fair trial” in the court from which he seeks to transfer a case, it is not only the *power*, but the *duty* of the court to make such order.”

14. Thus, having ascertained the legal position and keeping in view the principle of law laid down in the aforesaid cases, it appears that learned District Judge has not exercised the power under Section 24 of the CPC and merely accepting the request letter of the learned Civil Judge, Class-I, Pratappur for transferring the case to another court, on the basis of complaint made against him by plaintiff before the Registrar (Judicial), High Court of Chhattisgarh, transferred the civil suit to Civil Judge, Class-I, Surajpur whereas it will not furnish valid ground to make transfer of civil suit for one court to another court in view of legal analysis made hereinabove.

15. Accordingly, the impugned order dated 8.11.2017 is liable to be and is hereby set aside. The matter is remitted to the learned District Judge, Surajpur for considering the transfer application on its own merit in accordance with law after affording due opportunity of hearing to the affected parties.

16. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

17. Before parting with the matter, a word about judicial officer is imperative. In the instant case, Judicial Officer has recommended the transfer of pending suit before him to the District Judge to any other court on the ground that complaint has been made against him to the High Court by plaintiff (party to *lis*). In this regard following observation made by the Supreme Court in the matter of **All India Judges' Assn. v. Union of India**<sup>5</sup> is appropriate, in which it has been held that judicial officer should indifferent to private or partisan influences and pertinently observed as under:

“61. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office of the purpose of advancing his personal ambitions or increasing his popularity.”

18. I hope and trust that judicial officer manning the court would take note of the above-stated binding observation of the Supreme Court in performance of their judicial work and will discharge their duties without fear or favour.

19. A copy of this order be sent to District Judge Surguja for compliance and needful by E-mail / FAX.

Sd/-

(Sanjay K. Agrawal)  
Judge

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (Art. 227) No. 92 of 2018****PETITIONER** : Ashok Tiwari**Vs.****RESPONDENTS** : Sunil Kumar Tiwari, & Another**HEAD NOTE**

Application under Section 24 of the Code of Civil Procedure, 1908 has to be granted for transfer of civil suit only on the basis of valid in civil ground.

सिविल प्रक्रिया संहिता 1908 की धारा 24 के अंतर्गत सिविल वाद के अंतरण का आवेदन केवल वैध सिविल आधार पर स्वीकृत किया जाना चाहिए ।

D/-