

IN THE HIGH COURT OF BOMBAY AT GOA**TRANSFER APPLICATION NO. 6 OF 2019**

1. Shri Asmath Gafar Khan,
S/o Abdul Gafar Khan,
A trustees of Madina Masjid Trust
67 years of age, retired,
r/o H. No. 151, Hajira Manzil,
Behind Hotel Rabbani, Patrong Baina,
Vasco da Gama, Goa.

2. Shri Abdul Gafar Khan,
Son of Abu Gafar Khan,
major of age, business,
r/o H. No.151, Hajira Manzil,
Behind Hotel Rabbani, Patrong Baina,
Vasco da Gama, Goa.

..... Applicants

V e r s u s

1. Mr. Abdul Azim Shaik Mohidin,
Son of late Shaik Mohidin Shaik Dawood,
Aged about 67 years, Indian National,
Married, residing at House no,650,
Alto Chicalim, Goa.

2. Mr. Abdul Jabbar,
48 years,
Son of Abdul Rehman Ahmed,
Businessman, Indian National,
Married, resident of 5th floor,
Susheela Sea Winds, Alto Vaddem,
Above Goa Shipyard,
Vasco da Gama, Goa.

3. Shri Shaikh Moosa Shaikh Hussain
Alias Maksood Shaikh, s/o late

Shaikh Hussain Shaikh Moosa,
51 years, Businessman, C/o Hotel Suntan
Plaza, Sultan Lodge, 1st floor,
1st floor, Opp. Municipal Market,
Swatantra Path, Vasco da Gama,
Goa.

4. Shri Shaikh Rafat Hussain,
S/o late Shaikh Hussain Shaikh Moosa,
48 years, Businessman,
C/o Hotel Suntan Plaza,
Suntan Lodge,
1st floor, Opp. Municipal Market,
Swatantra Path, Vasco da Gama,
Goa.

..... Respondents.

Ms. Amira Razaq with Ms. Tanya Ferreira, Advocates for the Applicants.

Shri E. O. Mendes, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
Reserved on: 24 /9/2019
Pronounced on: 4/10/2019.

ORDER:

This is an application under section 24 of the Code of Civil Procedure (C.P.C, for short) for transfer of Civil Suit no.29/2019 from the file of the learned Principal District Judge, South Goa to any other Court.

2. The brief facts necessary for the disposal of the application may be stated thus: The respondent nos.1 and 2 (original plaintiffs) have instituted the aforesaid suit against the petitioners (the defendants nos.1 and 2) and the

respondent nos.3 and 4. The subject matter of dispute is a mosque known as “Madina Masjid” at Vasco-da-Gama. The dispute pertaining to the said mosque appears to be quite old. For the disposal of the present application it is not necessary to set out the nature of the dispute in details. Suffice it to mention that according to the respondent nos.1 and 2 the mosque is for the religious worship of the entire, Muslim community and not restricted to any particular sect/creed. On the contrary, according to the applicants, the said mosque is of Sunni Muslims i.e. orthodox Sunni faith which is known as “Ahle Sunnat wal Jamat”. According to the applicants, the father of the respondent no.1, namely, Shaikh Mohidin, Shaikh Dawood (former Mutawalli of the said mosque) also professed the orthodox Sunni faith. However, the respondent no.1 and his brother, Iqbal Mohidin profess a different creed than that followed in the Madina Masjid. The applicants claim that the respondent no.1 and his brother Iqbal are of “Wahabi/Tablighi Jamat.”

3. The respondent nos.1 and 2 have filed the aforesaid suit for a declaration that the expulsion of the defendant no.3 by the applicants from the trust managing the said masjid is null and void. The respondent nos.1 and 2 are also seeking a declaration that the induction of the defendant nos.2 and 4 in the trust is null and void and they be restrained from acting as trustees.

There are certain consequential reliefs sought including a direction to the defendant nos.1 and 2 not to hold any meetings of the trustees without due and proper notice to the plaintiffs and the sixth trustee. The said suit is filed in a representative capacity under section 92 of C.P.C. The cause of action in the suit is alleged to have arisen on 14/2/2019. The suit is filed on 3/5/2019.

4. The respondent nos.1 and 2/plaintiffs sought temporary injunction restraining the applicants herein from holding any meetings of the trust without due and proper notice to these respondents and the sixth trustee. It appears that the learned Principal District Judge issued a notice which was made returnable on 7/5/2019. The notice was served on the applicant no.1 in the evening of 6/5/2019. Incidentally the applicant no.1 also accepted the notice addressed to the applicant no.2, who was then abroad on a pilgrimage. The applicants put in appearance on 7/5/2019 and sought time. It is contended that the learned Principal District Judge without any opportunity of hearing and without granting time to file reply has granted ad interim relief in favour of the respondent nos.1` and 2.

5. It appears that one Shri Mohamma Badruza Maulana, a member of the 'Tablighi Jaamat', had instituted Civil suit no.1/2007 before the Wakf Tribunal for declaration, rendition of accounts, removal of Mutawalli and

appointment of court receiver. That the suit was filed against one Shaikh Hussain Moosa. The defendant in the said suit filed an application for rejection of the plaint, inter alia on the ground that the suit was barred by limitation. Incidentally, the present Principal District Judge was the Presiding Officer of the Wakf Tribunal who heard the said application for rejection of the plaint in suit no.1/2007 and was pleased to dismiss that application by order dated 11/1/2008. It is a matter of record that subsequently the said suit came to be withdrawn. Be that as it may, the contention on behalf of the applicant is that the learned Principal District Judge who as the then Presiding Officer of the Wakf Tribunal has made certain observations in para 13 of the order holding that the said mosque is for worship of the entire Muslim community and not for only particular sect/creed.

6. The applicants in view of the aforesaid circumstances, requested the learned Principal District Judge to recuse from hearing the suit, which request was not granted by the learned Principal District Judge, which order is subject matter of challenge at the instance of the applicants, in Writ Petition no.817/2019. The learned Principal District Judge while refusing to recuse from the case, has observed that under section 24 of C.P.C he had no jurisdiction to transfer the suit from his own file and a party aggrieved has to approach this court under section 24 of C.P.C. After the said order was

passed on 1/8/2019, the petitioners have filed the present application for transfer.

7. The respondent nos.1 and 2 have filed their reply and have opposed the application. It is contended that somewhere in March 2019 serious differences arose between the applicant and the respondent no.3 as each of them were trading serious charges of financial irregularities against each other, which resulted into the bank freezing the access to the trust account on the basis of the instructions received. It is contended that the applicants opened a new account in the same bank which is being operated by both the applicants. It is contended that there is an attempt by the applicants to radicalize the affairs of the mosque. It is contended that the learned Principal District has not granted any of the interim prayers except restraining the defendants from holding meeting of the trust till the time they file their written statement and reply to the application for interim relief. In so far as the order dated 11/1/2008 passed by the Wakf Tribunal in Suit no.1/2007 is concerned, it is contended that it was only an order on an application seeking rejection of the plaint. It is submitted that none of the parties herein were the parties to the said suit and merely on the basis of some observations made by the Principal District Judge, who as then Presiding Officer of the Wakf Tribunal, no apprehension as expressed on behalf of the applicant can arise. It

is submitted that the dispute in the present suit is purely related to the affairs of the trust and has nothing to do with the nature and manner of worship at the said mosque. All other adverse allegations made in support of the apprehension of the applicant that they will not get fair chance before the Principal District Judge are denied.

8. I have heard Ms. Razaq, the learned counsel for the applicant and Mr. Mendes, the learned counsel for the respondent. Perused record.

9. Ms. Razaq, the learned counsel for the applicant has submitted that (i) the essential dispute relating to the said mosque is as to whether the mosque is for the purpose of worship by the Sunni Muslims, namely, “Ahle Sunnat Wal Jamat” or whether it is for the persons belonging to the Muslim community as a whole. It is contended that the respondent nos.1 and 2, who are belonging to the “Tablighi Jamat” are trying to take possession of the masjid and manage affairs of the same. It is contended that the trust deed 16/12/1994 contains a clause that the status of the mosque shall be “Neutral”. It is submitted that in the wake of such dispute, the observations by the learned Principal District Judge in the order dated 11/1/2008 in Suit no.1/2007 that the masjid is for all the persons belonging to the Muslim community, gives rise to a reasonable apprehension in the mind of the

applicants that the learned Principal District Judge has already formed an opinion and the applicants shall not get a fair chance (ii) It is further submitted that the interim order dated 7/5/2019 was passed hurriedly without granting even a short time to the petitioner to file reply. Although the suit itself was filed on 3/5/2019 when the cause of action is alleged to have arisen on 14/2/2019, there was no urgency involved. (iii) That on 7/5/2019, the learned Principal District Judge remarked that there is mismanagement, fraud and groupism which is a serious matter, which shows that already an opinion is formed (iv) The respondent no.2 in the presence of the applicants and other worshipers boasted that the respondent no.1 and his brother Iqbal Mohidin are well connected with the Presiding Officer and they will surely get favourable others.

10. The learned counsel has placed reliance on the decision of the Supreme Court in the case of **Sahish Jaggi Vs. State of Chandigrah and others 2007 (3) SCC 62** and the order passed by this Court in Criminal Writ petition no.51/2012 on 16/8/2012 (**Mr. Rajesh G. Desai and others Vs. State, Criminal Writ Petition no.51 of 2012 decided on 16/8/2012**).

11. It is submitted that the objective circumstances as referred above are sufficient for any reasonable litigant to harbour an apprehension that he may

not get a fair trial before the concerned Judge, which is sufficient for transfer of the case.

12. On the contrary, Mr. Mendes, the learned counsel for the respondent nos.1 and 2 has submitted that the dispute in the present suit only pertains to the mismanagement of the trust, where the parties are making allegations and counter allegations against each other. It is submitted that the observations by the learned Principal District Judge as Presiding Officer of the Wakf Tribunal in the order dated 11/1/2008, were in a suit between different parties and are not relevant for deciding the controversy in the present suit. It is submitted that normally when the court is hearing an interim application where the adversary seeks time, some working arrangement is required to be made by the Court, which the learned Principal District Judge made by directing that the meeting will not be conducted till the written statement/reply is filed. It is submitted that the learned Principal District Judge has not granted any other relief at this stage. The contention that the respondent no.2 allegedly stated that he is well connected and would get a favourable order is denied. The learned counsel has placed reliance on the decision of this Court in the case of **Sapana Shekhar Pokale Vs. Shekar Pandrinath Pokale, 2018 (4) ALLMR 522**, in order to submit that the fancied notions of the litigants have no place in the transfer of the

proceedings from one court to another and the apprehension which is not supported by any acceptable reason is not sufficient for transferring the matter. It is submitted that an order of transfer, affects the morale of the Judicial Officer who is unwarrantedly required to suffer such consequences and this Court may not direct any such transfer.

13. I have given my anxious consideration to the rival circumstances and the submissions made.

14. Before going to the facts it is necessary to briefly note the settled legal position governing the issue of transfer of a case. It is now well settled that while dealing with such an application the Court is not deciding as to whether indeed the concerned Presiding Officer from whose Court the transfer of the case is sought for is biased or not. In other words, this Court is not required to record a finding that on the basis of the material produced the Judicial Officer is indeed biased. The essential consideration is whether on the basis of the circumstances alleged a reasonable and prudent litigant would harbour a doubt, whether he would get a fair trial or not.

15. The Supreme Court in the case of **Satish Jaggi (supra)** has held thus in paras 5 and 10 of the judgment:

“The law with regard to transfer of cases is well settled. This Court in the matter of [Gurcharan Dass Chadha v. State of Rajasthan](#) (AIR 1966 SC 1418) held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. This Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. This Court further held that it is one of the principles of the administration of justice that justice should not be done but it should be seen to be done. The court has further to see whether the apprehension is reasonable or not. This Court also said that to judge the reasonableness of the apprehension, the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension.

The Apex Court at para 10 of the said judgment has further held thus:

10. In this case, one thing which has to be kept in view is that the Sessions Judge himself has not indicated his disinclination to hear the matter. That is probably because he believes that the mere fact that his brother is known to some political heavyweight cannot stand in his way of discharging judicial function impartially without fear and favour. These are the hallmarks of judicial system. A judicial officer in whatever capacity he may be functioning has to act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair

decision which according to his conscience is the right one on the basis of materials placed before him. There can be no exceptions to this imperative, but at the same time there should not be any scope given to any person to go away with the feeling that the Judge was biased, however unfounded the impression may be.

(emphasis supplied)

7. The qualities desired of a Judge can be simply stated: "that if he be a good one and that he be thought to be so". Such credentials are not easily acquired. The Judge needs to have "the strength to put an end to injustice" and "the faculties that are demanded of the historian and the philosopher and the prophet". A few paragraphs from the book "Judges" by David Pannick which are often quoted need to be set out here:

The Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court..... His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war.... Or he may accelerate a revolution..... He may accidentally cause a peaceful but fundamental change in the political complexion of the country."

16. The question whether there are sufficient grounds for a prudent litigant to harbour a reasonable such doubt would depend upon facts and circumstances of each case.

17. In the case of **Sapana Shekar Pokale (supra)** an order of the learned Principal Judge of the Family Court at Pune allowing an application for transfer was subject matter of challenge before this Court. The transfer was allowed only on the ground that there was an adverse order passed against the original applicant seeking such transfer. It is in these circumstances that this Court found that there was no acceptable reason justifying the exercise of judicial power to transfer the proceedings in the facts of the said case. It was held that such an order would not only cause a serious dent in the mind of the litigant who is before the Court with regard to the sanctity of the judicial proceedings but also affect the morale of the Presiding Officer of the Family Court to pass judicial orders in the matter.

18. It is therefore that the Court has to undertake a delicate exercise of balancing all the relevant circumstances and then decide as to whether a case for transfer is made out. On one hand, there is consideration of the litigant who genuinely harbors a reasonable doubt as to whether he would get a fair trial before a particular Judge. On the contrary the Court has also to safeguard the dignity of the Court and to ensure that the system is not put at the mercy of a litigant, who without any reasonable or just cause or in a given case, even for a ulterior motive, seeks such transfer. The duty of the Court

considering an application under section 24 of C.P.C is onerous and has to to be discharged carefully on the basis of the objective circumstances as obtaining in the case.

19. Coming back to the present case, the ground that the respondent no.2 in the presence of the applicants and others boasted that the respondent no.1 and his brother Iqbal are well connected with the Presiding Officer and that they would surely get favourable orders, cannot be accepted as a ground for such transfer. In fact this Court would not appreciate any such allegation being made or the transfer being sought on any such ground. In the first place, even assuming that the respondent no.2 made any such statement, a judicial officer has absolutely no control as to what a litigant may say or represent outside the Court. This Court would deprecate any such attempt by the applicants to seek transfer on the basis of the alleged statement made by the second respondent.

20. This takes me to the other grounds particularly regarding certain observations made by the learned Principal District Judge in the order dated 11/1/2008 in Civil Suit no.1/2007. In para 13 of the order dated 11/1/2008, the then Presiding Officer of the Wakf Tribunal has observed that the mosque which is subject matter of dispute is not the place for only restricted persons

and the intention of purchasing the plot to construct the mosque was for a religious worship for the community as a whole. Prima facie it is not possible to accept that the suit which is sought to be transferred does not involve any such issue. It appears that the primary dispute is as to whether the mosque is of “Sunni” Muslims i.e. of orthodox Sunni faith which is known as “Ahle Sunnat wal Jamat” or for the Muslim community as a whole. The applicants claim that the respondent no.1 and his brother Iqbal are of “Wahabi/Tablighi Jamat.”. Thus although the civil suit no.1/2007 was between different parties, it pertains to the same mosque of which the management is in dispute in the present suit. I also find that the observations made in the order dated 11/1/2008 were not at a prima facie stage as in a given case, such observations even if made at a prima facie stage may not afford a ground for transfer. The observations were made in an order rejecting the plaint in Civil suit no.1/2007. It is another matter that when the order was subject matter of challenge, the suit was withdrawn. It is necessary to emphasize that the issue is, as to whether such observations can give rise to reasonable apprehension in the mind of the litigant. The next ground is about grant of ad interim relief on 7/5/2019. Here again a Court when dealing with an application for interim relief, finds that time is being sought by the respondent/defendant can pass appropriate orders or make any working arrangement, till the reply is filed so that the application for interim relief

can be decided on its own merits. Thus although prima facie no fault can be found with the judicial order passed on 7/5/2019, in my considered view the said circumstance taken together with the fact that the said Presiding Officer had made certain observations in the order rejecting the plaint in Civil Suit no.1/2007, can give rise to a reasonable apprehension in the mind of the applicants. The Supreme Court in the case of **Satish Jaggi (supra)** has reiterated the well known principles that justice should not only be done but should also seem to have been done.

21. Thus considering the ratio as laid down by the Hon'ble Apex Court in the case of **Satish Jaggi (supra)**, I find it appropriate that the suit is transferred to some other Court. It is made clear that such transfer shall not be read as casting any stigma or aspersion on the capacity or independence or sense of justice of the learned Principal District Judge. This is only to avoid any scope to the applicants to go away with a feeling that their case was not being heard appropriately. In the result the following order is passed:

O R D E R

The transfer application is allowed. Civil Suit no.29/2019 is withdrawn from the file of the learned Principal District Judge and is transferred to the file of the learned District Judge-I at Panaji for disposal

according to law. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

Ap/