

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**MISCELLANEOUS CIVIL APPLICATION NO.242 OF 2018**

1. Darshan Kaur Ishar Singh  
(since deceased)  
through her HLR, Applicant No.2

2. Gurbachan Singh Ishar Singh (for  
self and as HLR of Applicant No.1)

Adult Indian, aged about 63 years  
having old address at Room No.202,  
1<sup>st</sup> floor, Opp Ali Yavar Jung, Borivali  
(E), Mumbai- 400 064

...Applicants

Versus

1. Rameshwarnath Vig(since  
deceased)  
2. Rajindernath Vig (since deceased)  
3. Devendranath Vig  
Indian Inhabitant, age about 85  
years, Occupation Business residing  
at 14-B Lands End, D-29 Doongersey  
Road,  
Walkeshwar, Mumbai 400 006.

4. Smt. Veena Ahluwalia  
Indian Inhabitant, age about 68  
years, Occupation Business having  
old address at Deluxe Apt., 3<sup>rd</sup> floor,  
Altamount Road, Mumbai-400 006  
and present address at Pioneer  
Sports, Jamuna Building, L.T. Marg,  
Mumbai-400 002.

5. Meena Chona  
Indian Inhabitant, age about 53  
years, Occupation Business, Old  
address E-10 Green Park (Main),  
New Delhi and present address at

...Respondents

Flat No.502, Ved Kabir Building,  
Indranarayan Cross Lane, Santacruz  
(West), Mumbai -400 054.  
Nos. 1 to 5 being the heirs and legal  
representatives of Shri A.N. Vig.

6. Rameshwarnath Vig  
Karta of A.N. Vig (HUF) (since  
deceased).

7. Rameshwarnath Vig  
Executor of the will of late Dr. Gopal  
Das Madhok(since deceased)

8. Aslina Technical Institute Pvt. Ltd.  
14, Sushil Building, 1<sup>st</sup> floor, Arthur  
Bunder Road, Colaba, Mumbai-400  
005.

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Mr. J.M. Shah I/b. Mr. J.S. Saluja for the Applicant.  
Ms Tejal Pandya I/b. M/s. Ashwin Pandya and Associates for the  
Respondent No.8.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**JUDGMENT RESERVED ON: 6<sup>th</sup> DECEMBER, 2018.**

**JUDGMENT PRONOUNCED ON: 25<sup>TH</sup> MARCH, 2019.**

**JUDGMENT:-**

The Applicant has filed this application for transfer of  
Appeal No.59 of 2006 pending before the Court No.3 of the Small  
Causes Court, Mumbai to any other Appellate Bench of competent  
jurisdiction.

2. Heard Mr. J.M. Shah, the learned counsel for the Applicant

and Ms Tejal Pandya, the learned counsel for the Respondents. Perused the records.

3. The Applicant No.2 has been appearing in person in Appeal No.59 of 2006 pending on the file of Court Room No.3, Small Causes Court, Mumbai. The Applicants have filed this application for transfer of the appeal on several grounds including the ground of bias. The Applicant claims that the learned Judges have exhibited hostile attitude towards him giving rise to a serious apprehension that he would not get justice. Apart from other grounds, the Applicant claims that he was not being given sufficient time to prepare for the matter and that he was put to inconvenience.

4. Before advertng to the facts of the case, it would be advantageous to refer to the observations of the Apex Court in ***K.P. Tiwari vs State of M.P. 1994 AIR 1031*** wherein the Apex Court has observed as under:

*4.....A judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not*

*necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive.....*

5. Having gone through the records, in my considered view there are no justifiable grounds to hold that the learned Judges of the Small Causes Court are biased or that there are reasons to believe that the Applicant will not get justice. Nevertheless, the Applicant, who has been appearing in person is under a belief, though not reasonable and justifiable, that he will not get justice. Considering this peculiar situation and keeping in mind the oft repeated phrase that justice must not only be done but also be seen to be done, the Chief Judge of Small Causes Court, Mumbai is directed to allot the Appeal No.59 of 2006 pending before the Court Room No.3 to any other court of competent jurisdiction.

6. The application stands disposed of in above terms.

**(SMT. ANUJA PRABHUDESSAI, J.)**