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

**Civil Revision No.7654 of 2016 (O&M)
Date of Decision: 30.09.2019**

Palwinder Singh

.....Petitioner

Vs

Gurjinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. S.S. Gill, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks to assail the orders dated 21.10.2014 and 03.08.2016 passed by the District Judge, Ludhiana on the ground that in view of prayer made by the petitioner under Section 24 of the Code of Civil Procedure, the District Judge, Ludhiana ought not to have passed the aforesaid orders.

[2]. On 21.10.2014 and 03.08.2016, the District Judge, Ludhiana passed the following orders:-

Order dated 21.10.2014

"Reference made by the trial Court is perused and is declined, as prima-facie it appears that the civil court at Ludhiana or Payal has got no territorial jurisdiction to entertain

and try the matter as the agreement to sell in question was executed at Barnala and the land relating to which the agreement to sell was executed, is also situated in Tehsil and District Barnala. The trial Court is directed to decide the question of territorial jurisdiction relating to this suit at the earliest and to dispose off the matter in accordance with law. The parties are directed to appear before the referral court on 29.10.2014 for further proceedings.

Pronounced in the open court.

21.10.2014

*(Karamjit Singh)
District Judge, Ldh.”*

Order dated 03.08.2016

“The reference dated 16.07.2016 made by the court of Sh. Bhupinder Singh Mittal, CJJD, Ludhiana is perused. It appears that the referral court while making the said reference has not gone through the order dated 21.10.2014 passed by the undersigned which is available on judicial file. Vide order dated 21.10.2014 the trial Court was directed to decide the question of territorial jurisdiction related to this suit at the earliest and to dispose of the matter in accordance with law. So, this reference is hereby declined with direction to referral court to proceed further in this matter in compliance of the previous order dated 21.10.2014 passed by the undersigned. The parties are directed to appear before referral court for further proceedings on 8.8.2016.

03.08.2016

*Sd/-
District Judge, Ldh.”*

[3]. Brief facts are that an application under Section 24 of the Code of Civil Procedure was moved by the petitioner seeking transfer of the case from Ludhiana to the competent Court at Barnala. The suit for recovery was filed by the

plaintiff/petitioner in the Court of Civil Judge, Senior Division, Ludhiana on the ground that the defendants entered into an agreement to sell dated 08.02.2016 in respect of land measuring 70 *Kanals* 3 *Marlas* situated in the village Beehia, Tehsil and District Barnala @ Rs.9,82,000/- per acre. The amount of Rs.12 lakhs was paid in cash as earnest money and date of execution of sale deed was fixed as 28.06.2006.

[4]. It was further pleaded by the plaintiff that he was ready with the remaining sale consideration on the date fixed for execution of sale deed, but the defendants did not turn up to get the sale deed executed. At the time of execution of agreement to sell, defendants represented to the plaintiff that they have purchased the land in question from Gurnam Singh, Jarnail Singh and Saudagar Singh by paying the entire sale consideration to them. On the representation of the defendants, petitioner entered into agreement to sell and paid the earnest money and thereafter he remained ready and willing to honour his commitment to pay the balance sale consideration on the date of execution of sale deed, but later on plaintiff came to know that the defendants and his earlier vendors Gurnam Singh etc. had some dispute in respect of execution of sale deed or sale consideration and on account of that defendants could not get execution of the sale deed in favour of the plaintiff. Plaintiff

claimed recovery of the amount paid to the defendants by way of earnest money along with interest.

[5]. In the written statement filed by the defendants, they took specific objection with regard to the territorial jurisdiction of the Court. They specifically pleaded in the preliminary objection No.2 that the Court at Ludhiana has no territorial jurisdiction to adjudicate the suit. The agreement to sell dated 08.02.2016 was executed in respect of property situated within the territorial jurisdiction of Court at Barnala. The agreement to sell was also scribed at Barnala.

[6]. Replication was filed by the plaintiff, but no prayer was made for withdrawal of the suit from the Court at Ludhiana with a liberty to file suit in the competent Court at Barnala. Thereafter, plaintiff concluded his evidence. Defendants also concluded their evidence and the case was adjourned for rebuttal and arguments. At this stage, plaintiff/petitioner filed an application for transfer of the suit to the Court of competent jurisdiction at Barnala.

[7]. Learned counsel for the petitioner vehemently submitted that under Section 24(2) of the Code of Civil Procedure, this Court can transfer the suit to the competent Court at Barnala with direction to proceed from the point at which it will be transferred to the transferee Court. Under

Section 24(4) and 24(5) of the Code of Civil Procedure, this Court can transfer the suit from the Court at Ludhiana which has no jurisdiction to the Court at Barnala, which would be deemed to be the court of small causes.

[8]. Learned counsel in support of her submissions placed reliance upon **Hamza vs. Udayaraj, 2016(2) KLT 104 (Kerala)** and **Miss Pushpa Kapal vs. Shiv Kumar, 1988(2) R.R.R. 130 (Delhi)** and further submitted that the High Court can transfer the suit without there being any direction for *de novo* trial by the transferee court having jurisdiction under Section 24(5) of the Code of Civil Procedure so as to prevent fresh trial by the transferee court. Even if the suit has reached the stage of rebuttal and final arguments, the High Court can transfer the suit from the court which has no jurisdiction to try the same without waiting for the process of return of the plaint for presenting the same before the appropriate court. The High Court can withdraw the suit or transfer the suit proceedings at this stage and this power includes transfer of appeal as well.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. The case law cited by learned counsel for the petitioner can only be appreciated, if the petitioner has pursued the suit in a *bona fide* manner. In the instant case, written statement was

filed soon after filing of the suit in the year 2008. Specific stand was taken with regard to territorial jurisdiction of the Court at Ludhiana. Despite filing replication, the plaintiff did not seek any withdrawal of the suit under Order 23 Rule 1 CPC or transfer of the suit from Ludhiana to the competent Court at Barnala under Section 24 of the Code of Civil Procedure. The plaintiff proceeded to conclude his evidence and thereafter allowed the defendants to conclude their evidence.

[11]. Perusal of the record would show that the trial Court had already framed issue regarding jurisdiction of the Court. The issue regarding jurisdiction of the Court has to be decided by the trial Court at the earliest. Precisely for the said purpose, the trial Court made a reference to the District Judge in the year 2004, which was answered by the District Judge vide order dated 21.10.2014 thereby directing the trial Court to decide the question of territorial jurisdiction at the earliest and thereafter to dispose of the matter in accordance with law. Again a reference was made by the trial Court without adhering to the earlier order dated 21.10.2014 passed by the District Judge. Again the District Judge by making reference to the earlier order dated 21.10.2014 directed the trial Court to decide the question of territorial jurisdiction relating to the suit at the earliest and dispose of the same in accordance with law. The District Judge

has not opined anything in respect of transfer of the suit to the Court at Barnala, rather the reference made by the trial Court on two occasions were answered by directing the trial Court to proceed with the issue of jurisdiction at the earliest.

[12]. On 16.11.2016, following order was passed by the Co-ordinate Bench of this Court:-

“Learned counsel contends that power under Section 24 of the Code of Civil Procedure to transfer a case from one district to another vests only in this court. However, District Judge, Ludhiana, has made an observation that proceedings need to be transferred to the court at Barnala. According to the counsel, such an observation would amount to violation of provisions of Section 24 of the Code.

Comments of District Judge, Ludhiana, be sought regarding the aforesaid contentions made before this court.

Adjourned to 05.12.2016.

To be shown in the urgent cause list.

Meanwhile, further proceedings before the trial court shall remain stayed.”

[13]. The District Judge, Ludhiana has given his report with reference to the order dated 21.10.2014 and 03.08.2016 passed by him on earlier occasions. In my considered opinion, there is no legal error in the aforesaid orders passed by the District Judge, Ludhiana in view of facts and circumstances of the case. The plaintiff himself persisted to pursue his remedy before the Court at Ludhiana without seeking withdrawal/transfer of the suit in accordance with law. After conclusion of the evidence by both

the parties, the application in question came to be filed at the argument stage. Plaintiff had the knowledge about the objection with regard to the territorial jurisdiction of the Court in view of written statement filed by the defendants after filing of the plaint. Plaintiff kept on pursuing his remedy in the Court having no jurisdiction till it reached the stage of rebuttal and arguments.

[14]. The Hon'ble Apex Court in ***Oil and Natural Gas Corporation Ltd. vs. M/s Modern Construction and Co., 2013(4) CivCC 617*** while interpreting Order 7 Rule 10 CPC and Section 24 CPC held that if the suit is filed in the Court having no jurisdiction, plaint can be returned to the plaintiff, even if the trial has been concluded. Once the plaint is presented after being returned from the Court having no jurisdiction, the same is to be treated as a fresh suit and even if the trial was concluded earlier, it has to be a *de novo* trial before the transferee Court. The only protection which could be taken by the plaintiff is in the form of Section 14 of the Limitation Act and the court fee, if paid earlier can be adjusted, but by no stretch of imagination it can be held to be a continuation of the suit. After presentation before the Court of competent jurisdiction, the plaint has to be considered afresh plaint and the trial has to be conducted *de novo*, even if, it is concluded before the Court having no jurisdiction. The Hon'ble Apex Court has relied upon number of

precedents on this subject.

[15]. In view of aforesaid precedent, it can be appreciated that it was the conduct of the plaintiff which ultimately resulted in delay in seeking transfer of the case before the competent Court at Barnala. The plaintiff cannot be granted any premium over his inaction. He could have resorted to lawful remedy for transfer of the suit at the very inception or during intervening period after coming to know about the incompetence of the Court at Ludhiana to try the suit. Plaintiff waited for the case to reach at the point of culmination and thereafter filed the application under Section 24 of the Code of Civil Procedure. The case law cited by learned counsel for the petitioner are distinguishable and equity does not tilt in favour of the petitioner to seek continuation of the suit proceedings from the stage at which it is to be transferred from the Court at Ludhiana to the competent Court at Barnala. Power under Section 24 of Code of Civil Procedure cannot be exercised *ipse dixit*. It must be exercised with due care and caution. Right of transfer of a case cannot be construed liberally as the rules of proceedings are intended to provide justice and not to defeat the same. Therefore, substantive right of a party cannot be taken away. Section 24 CPC merely confers discretionary power. The Court may or may not in its judicial discretion transfer a case. Reference can be

made to **Kulwinder Kaur vs. Kandi Friends Education Trust**
(2008) 3 SCC 659 and **Nahar Industrial Enterprises Ltd. vs.**
Hong Kong & Shanghai Banking Corp. (2009) 8 SCC 646.

[16]. In view of facts and circumstance of the case, I am of the view that since the District Judge, Ludhiana has already passed the orders on two occasions, therefore, the trial Court shall pass appropriate order on the question of territorial jurisdiction and thereafter shall dispose of the suit in accordance with law. Consequently, there is no error of jurisdiction in the impugned orders passed by the District Judge, Ludhiana. This revision petition is thus found to be totally meritless and is accordingly dismissed.

September 30, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No