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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 30.01.2020

+ **TR.P.(C) 110/2019 & CMs 3791-92/2020**

JANAK DATWANI Petitioner
Through: Mr.Abhimanyu Mahajan,
Ms.Anubha Goel, Mr.Sarthak Mehrotra,
Ms.Tanisha Bawa, Mr.Mayank Joshi, Advs.
Mr.Siddhant Jain, Mr.Nipun Joshi, Advs.
For R-12.

versus

JAMNA DATWANI & ORS. Respondents
Through: Ms.Mansi Sharma, Ms.Nitya
Sharma, Advs. for R-6.
Ms.Geetanjali Shahi, Adv. for R-5.
Mr.Suresh Singh, Adv. for R-2,3,10.
Mr.Saurabh Seth, Adv. for R-7.
Mr.Vivek Sharma, Ms.Mamta Gautam,
Advs. For R-4.

(4) **TR.P.(C) 112/2019**

JANAK DATWANI Petitioner
Through: Mr.Abhimanyu Mahajan,
Ms.Anubha Goel, Mr.Sarthak Mehrotra,
Ms.Tanisha Bawa, Mr.Mayank Joshi, Advs.

versus

DAYAL D SHAHDADPURI & ORS. Respondents
Through: Ms.Mansi Sharma, Ms.Nitya
Sharma, Advs. For R-1.
Mr.Suresh Singh, Adv. for R-2 to 4.

Mr.Vivek Sharma, Ms.Mamta Gautam,
Advs. For R-7.

(5) TR.P.(C) 113/2019

JANAK DATWANI Petitioner
Through: Mr.Abhimanyu Mahajan,
Ms.Anubha Goel, Mr.Sarthak Mehrotra,
Ms.Tanisha Bawa, Mr.Mayank Joshi, Advs.

versus

C N A EXPORTS PVT. LTD. & ORS. Respondents
Through: Ms.Mansi Sharma, Ms.Nitya
Sharma, Advs. for R-4.
Mr.Suresh Singh, Adv. for R-1-2.

(6) TR.P.(C) 114/2019

JANAK DATWANI Petitioner
Through: Mr.Abhimanyu Mahajan,
Ms.Anubha Goel, Mr.Sarthak Mehrotra,
Ms.Tanisha Bawa, Mr.Mayank Joshi, Advs.

versus

PACIFICA INFRASTRUCTURE COMPANY PVT. LTD. &
ORS. Respondents
Through: Mr.Suresh Singh, Adv. for R-2-3.
Mr.Siddhant Jain, Mr.Nipun Joshi, Advs.
For R-1&4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioner seeking transfer of the following suits:

- i) CS No.57827/2016;
- ii) CS No.57829/2016;
- iii) CS No.57828/2016;
- iv) CS No.58734/2016.

(All pending before the learned ADJ-05, New Delhi District, Patiala House Courts, New Delhi)

2. The learned counsel for the petitioner has placed reliance on the order dated 16.05.2014 passed by the Hon'ble Division Bench of this Court in FAO(OS) No.592/2013, titled ***Janak Datwani vs. Jamna Datwani & Ors.***, alongwith the connected appeal, being FAO(OS) No.593/2013, titled ***In Exports Pvt. Ltd. vs. Jamna Datwani & Ors.***, *inter alia* directing as under:

“27. From the above narratives it is clear that CS(OS) No.118/2007, CS(OS) No.1113/2007, CS(OS) No.556/2008, CS(OS) No.1791/2011, CS(OS) No.244/2013 and CS(OS) No.1461/2013 all relate to the shareholding in the company CNA Exports Pvt. Ltd. Whereas CS(OS) No.1461/2013 has been dismissed the others are pending.

28. We see no reason why the said five suit i.e. CS(OS) No.118/2007, CS(OS) No.1113/2007, CS(OS) No.556/2008, CS(OS) No.1791/2011 and CS(OS) No.244/2013 be not consolidated and common evidence led. The necessity to consolidate the suits arises not only on account of the fact that common questions of law and fact arise for consideration, if not wholly, in substantial measure

in the said five suits but also for the reason the parties have shown a litigious behavior evidenced by the fact that in the suits filed by them eighty three interim applications have been filed out of which twenty six are still pending and God knows how many more would be filed.

29. We therefore direct that CS (OS) No. 118/2007, CS(OS) No.1113/2007, CS (OS) No.556/2008, CS (OS) No.1791/2011 and CS (OS) No.244/2013 shall stand consolidated. Evidence would be led in CS(OS) No.118/2007. Since issues have yet to be settled in the said five suits, we would request the learned Single Judge to settle the issues on the next date of hearing. We request the learned Judge Incharge of the Original Side to list all the suits before one Hon'ble Judge on the Original Side. We direct that trial in the suits which are consolidated shall commence as expeditiously as possible and that decisions may be taken in interim applications as per the calendar of the Court, but pendency of the applications should not come in the way of the consolidated suits proceeding to trial.

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32. We bring the curtains down by reiterating that the subject matter of the two appeals stood resolved when we had passed the order on May 02, 2014. The order passed today has been passed in exercise of the inherent power which a Court of Justice must possess to prevent misuse of its procedures in relation to action(s) initiation whereof may apparently be not inconsistent with the literal application of the law but otherwise would be manifestly unjust and unfair to any party. Indeed, it would be a scandal to the administration of justice where on an issue concerning shareholding in a company cross claims would be adjudicated in separate suits and the litigious

parties flood the Courts with applications nearing a century.”

3. The above suits, on increase in the pecuniary jurisdiction of this Court, were transferred to the District Court and were being heard together before the District Court.

4. The petitioner thereafter amended the plaint in CS(OS) no.1113/2007, which had been renumbered as 57826/2016.

5. By an order dated 02.04.2019 passed by the learned ADJ-05, New Delhi District, Patiala House Courts in the said suit, while allowing the application of the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908, the Additional District Judge further directed return of the plaint to the plaintiff.

6. The petitioner thereafter filed a transfer petition, being TR.P.(C) No.57/2019, titled ***Janak Datwani vs. C N A Exports Pvt. Ltd. & Ors.***, seeking transfer of the said suit inspite of return of the plaint. The said petition was allowed by this Court by its order dated 25.07.2019.

7. The present set of petitions have been filed thereafter by the petitioner placing reliance on the order of the Division Bench referred to hereinabove and contending that as the suits had been consolidated, it is in the interest of justice that these

suits be also transferred to be listed along with CS(OS) no.1113/2007.

8. I may note that certain respondents in the present petitions have not been served. The learned counsel for the petitioner submits that these respondents have not been appearing before the Trial Court as well. I therefore, do not deem it necessary to await for their service.

9. The learned counsel for the respondent nos.1 and 2 in TR. P.(C) No.110/2019, submits that the said respondents have filed an application seeking review/modification of the order dated 16.05.2014 in FAO(OS) No.592/2013 passed by the Division Bench of this Court. He submits that the Division Bench of this Court had erred in ordering consolidation of the suits. He further submits that the petitioner himself has reconciled from the position that the said suits need to be consolidated. He has set out these circumstances in the application being CM 3791/2020, filed before this Court.

10. The learned counsel for the respondent no.1 has further been joined by the learned counsel for the respondent nos.2, 3 and 10, who submits that the petitioner has, with *mala fide* intent, increased the valuation with respect to only one suit. For the remaining suits of which transfer is prayed for in form of the present petitions, in spite of objection of the respondents to the valuation of the said suits, the petitioner has not increased the valuation and therefore, the suits are presently pending

before the Court of competent jurisdiction and may not be transferred unless on the ground of under valuation.

11. The learned counsel for the respondent no.1 has further submitted that the respondent no.1 has also filed an application seeking withdrawal of the suit being CS No.57827/2016 (subject matter of the TR. P.(C) no.110/2019) and notice on the application has been issued.

12. The learned counsel for the respondent no.1 further submits that there is another suit, being CS No.1292/2017, which is pending before the Patiala House Courts between the parties and for which the petitioner has not yet applied for transfer nor applied for consolidation alongwith the other suits. He submits that this also reflects the *mala fide* intent of the petitioner.

13. Further, placing reliance on the judgment of this Court in ***SC Jain vs. Bindeshwari Devi*** 1997 (42) DRJ 239, they submit that there is a difference between the consolidation of the suits where one decree would be passed in the consolidated suits as distinct from cases where the suits are tied together only to prevent multiple recording of evidence, but may still require different decrees to be passed in each suits. They submit that in the present case, the suits had been consolidated only for the purposes of recording of evidence and would still require passing of separate decrees in each suits. In view of the same, the suits need not be transferred and the evidence

recorded in one of the suits can always be relied upon and read in the other suit.

14. I have considered the submissions made by the learned counsels for the parties.

15. The directions of the Division Bench of this Court have been reproduced hereinabove. It in no unequivocal terms directs that the suits have to be consolidated and common evidence led in the same. The Division Bench has also observed that the common questions of law and fact arise for consideration, if not wholly, in substantial measure in all the suits. In fact, in passing such order, the Court invoked its inherent power and held that it would be a scandal to the administration of justice where on an issue concerning shareholding in a company, cross claims would be adjudicated in separate suits.

16. Based on such observations, this Court by an order dated 11.07.2016 passed in TR.P.(C) no.47/2016, titled ***Pacifica Infrastructure Co. Pvt. Ltd. vs. Janak Datwani & Ors.***, transferred one of the suits, which had gotten de-tagged on increase in the pecuniary jurisdiction of this Court and had been transferred to the Court of ADJ-05, Saket District Courts to the Court of the learned ADJ-05, Patiala House Courts, to be tried alongwith the other suits.

17. As far as the submission of the learned counsel for the respondents that the suits pending before the learned Trial Court have not been properly valued, such submission can always be raised by the respondents before the Transferee Court as well. Transfer of these suits would not in any manner prejudice the respondents from raising such objections.

18. As far as the objection of the learned counsel for the respondent no.1 on the ground of his filing an application seeking withdrawal of the suit is concerned, the learned counsel for the petitioner submits that the said application is being opposed. The said application would also be considered by the Transferee Court on its own merit and cannot be a ground for refusing the transfer of the said suit at this stage.

19. The submission of the learned counsels for the respondents based on the judgment of this Court in *S.C. Jain*(supra) also cannot be accepted as the stage for considering the question of consolidation of the suits is well passed and has already been ordered by the Division Bench of this Court in the order dated 16.05.2014 referred to hereinabove. Mere filing of an application seeking review/modification of the said order by the respondent no.1 that too only after the matter had been partly heard by this Court cannot, in my view be a sufficient ground for not transferring the said suit. Such transfer would always abide by the orders passed by the Division Bench of this Court on the application filed by the respondent no.1.

20. As far as the plea of the respondent no.1 on the pendency of the sixth suit is concerned, this again need not be decided by this Court inasmuch as neither party has filed an application seeking consolidation of the said suit with the other five suits nor has any transfer petition been filed before this Court. As and when such application is filed, it shall be considered on its own merit.

21. In view of the above, the petitions are allowed and the abovementioned suits are transferred to this Court to be consolidated and tried alongwith CS(OS) No.1113/2007, titled ***Janak Datwani vs. C N A Exports Pvt. Ltd. & Ors.***, pending before this Court.

22. The suits on transfer shall be listed before the concerned Joint Registrar on 26th February, 2020. There shall be no order as to costs.

Dasti.

NAVIN CHAWLA, J

JANUARY 30, 2020

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