

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 3165 of 2019

**Sarosij Bandhopadhyay
Vs.
Smt. Pranati Banerjee & Ors.**

For the Petitioner : Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
Mr. Kaustav Bhattacharya, Adv.

For the Opposite Parties : Mr. S. Tareq Mina, Adv.
Mr. Protick Sardar, Adv.

Heard On : 13.12.2021.
Judgment : 17.12.2021.

Subhasis Dasgupta, J:-

This is a transfer application under Section 24 of Code of Civil Procedure, seeking transfer of a Title Suit No. 147 of 2014, now pending before the court of learned Civil Judge (Junior Division), 3rd Court, Howrah to the court of learned Civil Judge (Senior Division), 1st Court, Howrah.

Mr. Debjit Mukherjee, learned advocate appearing for the petitioner submitted that a suit for eviction had been instituted against the petitioner describing himself to be licensee in Title Suit No. 147 of 2014 of learned Civil Judge (Junior Division), 3rd Court, Howrah.

Adverting to a photocopy of plaint of T.S. No. 10 of 2012, now pending before the learned Civil Judge (Senior Division), 1st Court, Howrah, Mr. Mukherjee submitted that petitioner had also instituted a suit for partition against defendants/co-sharers mentioning the suit property involved in the eviction suit, brought against the petitioner, as one of the properties to the schedule of partition suit.

Since, one of the properties mentioned in the schedule for partition suit is the subject matter of the eviction suit, from which the petitioner was sought to be evicted, as a licensee, there is fair chance of occasioning conflicting decisions to come in the event of the two different Title Suits, mentioned hereinabove, being tried independently in two different courts of same station, Mr. Mukherjee argued.

Admittedly, petitioner was unsuccessful in transfer application, filed before the learned District Judge, Howrah in connection with Misc. Case No. 146 of 2016. Though petitioner was unsuccessful in the transfer application under Section 24 C.P.C. before the learned District Judge, Howrah in Misc. Case No. 146 of 2016, but the petitioner even after being negated by learned District Judge, Howrah in transfer application under Section 24 C.P.C., had chosen this forum for transfer of the pending eviction suit from the court of learned Civil Judge (Junior Division), 3rd Court to the court of learned Civil Judge (Senior Division), 1st Court of same station.

The attention of the Court was drawn to the observations of learned District Judge, Howrah, while declining to pass any order allowing transfer in application of the provisions under Section 24 C.P.C., to page no. 2 of the order of the learned District Judge, dated 13.08.2019, passed in Misc. Case No. 146 of 2016, to the effect that ***“on conjoint reading of the plaint of both the Title Suit I find that result of one suit has some impact on the result of another suit, but that fact does not ipso facto suggest that both the suits should be tried by same Court because nature of both the suits are different, nature of relief sought for in both the suits are not same and identical and that apart, subject matter of the Title Suit No. 147 of 2014 and the subject matter of Title Suit No. 10 of 2012 are not same and identical.”***

Referring such order of learned District Judge, Mr. Mukherjee strenuously argued before the Court that Section 24 of Code of Civil Procedure provided concurrent jurisdiction to the both the courts i.e. the District court and High Court, and on the given facts situation, an application could be maintained, even after dismissal of an application under Section 24 of Code of Civil Procedure filed by the petitioner previously.

It was thus emphasized that there was no bar under Section 24 of C.P.C. to file a separate application before this Court even on the self-same cause, and on self-same facts situation.

Taking such grounds, and stressing upon the need to prevent conflicting decisions to come, the instant application was proposed to be transferred.

Per contra, Mr. S. Tareq Mina, learned advocate for the opposite party replied that the pending eviction suit had reached the peremptory hearing stage, though there had been no commencement of the trial, as yet; while partition suit was at preliminary stage. Challenging the maintainability of the instant transfer application, learned advocate for the opposite party contended that after the rejection of the prayer for transfer application by the learned District Judge, no separate transfer applications would be maintainable before this Court on self-same facts situation, what had been duly appreciated by the learned District Judge, without proof of any change in the circumstances.

More so, in the absence of biasness focused against the Trial Court, before whom the eviction suit is pending, it would not be reasonable for all purposes to transfer the eviction suit from the court of learned Civil Judge (Junior Division) to the court of learned Civil Judge (Senior Division) of same station.

Learned advocate opposite party candidly admitted that best evidence always ought to be produced before the court of law for a perfect adjudication of the matter in controversy between the parties.

Upon taking such grounds, the opposite party had sought for dismissal of the transfer application.

The admitted position is that one the of the properties mentioned in the partition suit, pending in the court of learned Civil Judge (Senior Division), Howrah, is the subject matter of eviction suit vide. Title Suit No. 147 of 2014, now pending before the learned Civil Judge (Junior Division), 3rd Court, Howrah, from which the petitioner was sought to be evicted describing him to be licensee.

The further admitted position is that the petitioner had sought for partition of properties, mentioned in the schedule to the partition suit against his co-sharers, in which one of the properties involved in the eviction suit is also incorporated in the schedule of properties for partition suit.

There had been no commencement of trial so far as eviction suit is concerned, as yet. While partition suit is at preliminary state.

As regards the biasness contended by the opposite party, the Court perceives that transfer application will not become unsuccessful in the absence of biasness being shown against the Trial Court. This is not the real state of affairs. Biasness is one of the considerations available in an action under Section 24 of C.P.C. But that is not the one and only ground available under Section 24 C.P.C. for the proposed transfer. Such submission of opposite party has no substance requiring any further discussion.

Much was argued by either of the parties to this case with regard to the maintainability of the instant transfer application under Section 24 of

C.P.C., what had been rejected earlier by the learned District Judge, Howrah in Misc. Case No. 146 of 2016.

Reliance was placed on such issue by Mr. Mukherjee on a decision delivered by this Court in the case of **Smt. Monalisa Koley Vs. Sri Sourav Sasaru** reported in **(2019) 1 CAL LT 76 (HC)**, wherein the principle behind the maintainability of separate application under Section 24 C.P.C., even after rejection of the self-same prayer under Section 24 C.P.C. by learned District Judge of court below, was taken into account on self-same facts situation.

The Division Bench of this Court made a comparative analysis of the provisions available under Code of Criminal Procedure and Civil Procedure Code in the case of **Diptendu Nayek & Ors. Vs. State of West Bengal** reported in **93 CWN 119**, to answer a question that was arisen for the consideration of the Special Bench, as to whether a person can make an application to the High Court for anticipatory bail under Section 438 of the Cr.P.C., after making a similar application under the same Section to the court of Sessions without success.

It would be, thus, most profitable on this issue to reproduce the observation of such judgment of Division Bench, made in the Para-11 of the judgment, as hereunder:

“11. During the course of argument we drew the attention of the learned Counsel for the parties to the provisions of Section 24 of the Code of Civil Procedure, 1908, wherein the analogous expression “the High Court or the District Court”, has

been used and it has been provided that “the High Court or the District Court may at any stage” transfer or withdraw any suit, appeal or other proceeding and the settled position in this Court is that a party may apply afresh to the High Court under Section 24 even after moving the District Court without success. As early as in 1909, when it was urged before a Division Bench of this Court in **Hari Nath v. Debendra Nath (11 Calcutta Law Journal 218)** that under Section 24, the High Court and the District Court having concurrent powers, the High Court would have no jurisdiction under that Section where the District Court had already declined the transfer, Sir Ashutosh, speaking for the Bench, repelled the contention (at 219) as having “manifestly no foundation” and ruled that under Section 25 of the preceding Code of 1882, corresponding to Section 24 of the present Code, “this Court frequently exercised the power of transfer after an application for transfer made to the District Court had proved infructuous”. To the same effect is the later decision of Patna High Court in **Sheo Mandan v. Mangal Chand (AIR 1927 Patna 383 at 384)** where the Division Bench decision of this Court in **Hari Nath (Supra)** was followed. A similar contention appears to have been made in a much later Division Bench decision of this Court in **Gorachand v. Dipali (1976-2 Calcutta Law Journal 380)** and it was urged that the petitioner once having made an application under Section 24 before the District Court and that application having failed, shall not be entitled to move a fresh application under Section 24 before the High Court. The Division Bench has ruled (at 387) that “on a plain reading of the Section, it can not be said that moving an application before the District Court will preclude the petitioners from moving a fresh application before the High Court” and relied on and followed the Division Bench

*decision in **Hari Nath (Supra)** and the Patna decision in **Sheo Nandan (Supra)** for the purpose. As already noted, Section 438 or 439 of the Criminal Procedure Code, 1973, uses similar expression and empowers “the High Court or the Court of Sessions” to exercise powers thereunder and we have not been able to find any good reason as to why the ratio of these Division Bench decisions of our Court, construing the analogous expression in Section 24 of the Code of Civil Procedure, shall not apply to the construction of Section 438 or Section 439 of the Code of Criminal Procedure, 1973.”*

Though the maintainability of the instant transfer application was grossly focussed during the submissions disclosed by the learned advocate for the opposite party, but giving precedence to the technicalities, could not be principally disputed by the learned advocate for opposite party, so as to prevent conflicting decisions to come.

It is thus no longer *res integra* that there cannot be a separate application under Section 24 of the C.P.C. before the High Court even after becoming unsuccessful before the District Judge in an application under Section 24 of the C.P.C. for the self-same facts, even without any proof of change in the circumstances.

In view of the decision rendered by the Division Bench of this Court long before, what was applied in some other cases, as it is in the case of **Smt. Monalisa Koley (Supra)**, such proposition of law still holds the field.

When the learned District Judge, Howrah admitted in his observation that the result of one suit had some impact on the result of other suit, it was for the District Judge, Howrah to take into such account and ought to have allowed transfer in the interest of preventing conflicting decisions to come, without giving precedence to the technicalities.

The instant transfer application is quite maintainable before this Court. There is hardly left any scope for further elaboration with regard to maintainability of the instant transfer application.

Having considered the submissions of both sides, it appears that there is strong force in the submissions advanced by Mr. Mukherjee, in view of the settled proposition of law, as referred hereinabove.

The transfer application is thus disposed of directing learned Civil Judge (Junior Division), 3rd Court, Howrah, to transfer Title Suit No. 147 of 2014 to the court learned Civil Judge (Senior Division), 1st Court, Howrah, where partition suit being T.S. 10 of 2012 is pending, within a period of fortnight from the date of communication of this order.

Though consolidation of two suits was proposed in the prayer portion of the transfer application, which is left to be decided by the transferee court in accordance with provisions of law.

The transferee court is directed to proceed with the eviction suit after giving notice to the either of the parties to this case, so as to secure their presence in the eviction suit, in accordance with the provisions of law.

The petitioner is directed to serve cope of this order to both the courts below.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)