

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

CR-2571 of 2021 (O&M)
Date of decision: 11.11.2021

Swaran Singh deceased through LR Ajit Singh

...Petitioner

Versus

Mohinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mrs. Kanwal S. Walia, Advocate
for the petitioner.

H.S. MADAAN, J.

By way of filing the present revision petition, Sh. Ajit Singh son and legal heir of Sh. Swaran Singh, deceased seeks transfer of civil suit pending in the Court of Dr. Sushil Bodh, Addl. Civil Judge (Sr. Divn.) Bholath to some other Court of competent jurisdiction by setting aside order dated 01.09.2021 (Annexure P-16A) passed by District Judge, Kapurthala, dismissing the application of the petitioner for transfer under Section 24 read with Section 151 CPC.

Briefly stated facts of the case are that, plaintiffs Mohinder Singh and Balvir Singh sons of Bal Singh, had brought a suit for grant of permanent injunction against defendant Swaran Singh; during pendency of the said suit, plaintiffs had moved an application under Section 151 CPC for restoration of water channel and to use the electric motor with police help; the said application was dismissed by the trial Court, vide

order dated 03.05.2019.

Feeling aggrieved, plaintiff Mohinder Singh had filed a revision petition before High Court. The revision petition was allowed and the trial Court was directed to decide the application under Section 151 CPC after framing of issues. The trial Court accordingly framed the issues, allowed the parties to lead evidence and thereafter, accepted the application.

The defendant nursing an apprehension that since the trial Court had given its mind while deciding the application under Section 151 CPC, so it cannot take a different view, as such, to avoid the bias for said reason, the case be transferred from the trial Court presided over by Dr. Sushil Bodh, Addl. Civil Judge (Sr. Divn.) Bholath to some other Court of competent jurisdiction by moving an application in that regard before District Judge, Kapurthala.

The application was resisted by the plaintiffs. Learned District Judge, Kapurthala, vide order dated 01.09.2021 had dismissed that application. The operative part of the order runs as follows:-

“4. Admittedly, present respondent Mohinder Singh alongwith another, had filed a suit for permanent injunction, against the present applicant Swaran Singh, before the Court of Ld. Addl. Civil Judge (SD), Bholath and the same is still pending before the Ld. Lower Court. Further, record reveals that an application under section 151 CPC for restoration of Aar (water channel) was also filed by the present respondents and reply was filed by the present applicant, before the Ld. Lower Court and Ld. Lower Court after framing issues and after taking into consideration the

evidence, had allowed the application under section 151 CPC, so filed by the present respondents, vide order dated 13.02.2020. Thereafter, the present applicant Swaran Singh also filed CR-1674-2020, before the Hon'ble High Court against order dated 13.02.2020 passed by the Ld. Lower Court and the same is still pending before the Hon'ble High Court. Further, the applicant has himself placed on record copy of order dated 16.03.2020, passed by Hon'ble High Court in CR-1674-2020, in which the Hon'ble High Court has categorically held that the trial Court shall be at liberty to decide the main case, if it is ripe for arguments without being influenced by any observations made in the impugned order.

5. So, since due directions have been given by the Hon'ble High Court to the Ld. trial Court, as stated above and moreover CR-1674-2020 is still pending before the Hon'ble High Court, hence this Court cannot transfer the present case, from the Court of Addl. Civil Judge (SD), Bholath, due to abovesaid reasons. The application of transfer, being without merit, is hereby dismissed. The parties are directed to appear before the Court of Sh. Sushil Bodh, Ld. Addl. Civil Judge (SD), Bholath on 14.09.2021 at 09.30 A.M sharp. Summoned record be returned alongwith copy of this order and the file of transfer application be consigned to the record room."

Feeling aggrieved, the legal heir of defendant Swaran Singh has approached this Court with similar prayer.

I have heard learned counsel for the revisionist besides going through the record and I find that there is no reason to disagree with the order passed by learned District Judge, Kapurthala dated 01.09.2021 and to accept the prayer for transfer of the civil suit. The applicant is feeling

apprehensive simply on account of some observations made by Dr. Sushil Bodh, Addl. Civil Judge (Sr. Divn.) Bholath while allowing application under Section 151 CPC, vide order dated 13.02.2020. However, a perusal of that order goes to show that in para No.12, it is specifically mentioned that the observations in the order have been made just for the decision of the application and shall have no bearing on the merits of the case. The applicant should not nurse any apprehension that the trial Court would be bound by the observations made in the year with regard to touching the merits of the case and will not take a different view. It has to be taken note of that the applicant has not levelled any allegations touching impartiality and integrity of the judicial officer. It is not his case that the Presiding Officer has got any personal interest in the matter or is favourably inclined towards the opposite party on account of some acquaintance, relationship or for some extraneous reasons. A judicial officer is expected to decide the matter before him in accordance with law and is open to conviction. If applicant is successful in convincing the Court with regard to merits of his case, then applicant can certainly hope to have a favourable verdict. While deciding the application under Section 151 CPC, the trial Court was required to consider the factual as well as legal position in the process touching the merits of the case but as has been mentioned in the order itself, that was for the limited purpose of deciding the application. The civil suit is to be decided after considering the rival versions of the

parties, the evidence adduced by them and the legal position on the subject. Simply because an application has been decided in favour of plaintiffs, does not mean that the suit would necessarily be decided in their favour. As already observed, the suit is to be decided on merits after considering the factual and legal position and analyzing the evidence adduced by both the parties.

Learned District Judge was justified in dismissing the applicant, noticing that due directions have been given by High Court to the trial Court by passing order in CR No.1674-2020, which is still pending. With regard to judgments referred to by learned counsel for the petitioner i.e. Kulwinder Singh @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust & Ors., 2008 (1) RCR (Civil) 821, M/s Vishnu Kumar Gupta Vs. Union of India, 2001(3) RCR (Civil) 668, Smt. Sunita Devi Vs. Ram Kripal & Anr. 2014 (106) ALR 756, Vishnu Goyal Vs. Smt. Jyoti Sharma & Anr., 2009(21) RCR (Civil) 350 and Vasant D. Bhavsar Vs. Bar Council of India, 1999(4) SCT 878. Those are not applicable to the instant case on account of different facts, circumstances and the context in which such observations have been made. Therefore, the revision petition is doomed for failure and is dismissed accordingly.

11.11.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No