

13.12.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.2088 of 2022

Tanmoy Konar & ors.

Vs.

**Sri Sri Annapurna Mata through its Sebait Sri
Bholanath Roy & ors.**

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mrs. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya
...for the petitioners

Mr. Srikrishna Samanta
...for the opposite party no.1

Subject-matter of challenge in this case is against the rejection of an application under Section 24 of the C.P.C. passed by learned District Judge, Hooghly, in Misc. Case No.3 of 2022.

Admittedly, in a suit for declaration and injunction petitioners are defendants, while plaintiff/opposite party is being represented by his Sebait namely, Sri Bholanath Roy, learned advocate, practising at Arambagh Court.

Mr. Mukherjee, learned advocate appearing for the petitioners/defendants submits that in spite of making engagement of a learned lawyer, for and on behalf of the defendants from the bar of Arambagh Court, the advocate already appointed for the defendants declined to participate in hearing process upon viewing

presence of Mr. Bholanath Roy, learned advocate a renowned practitioner of Arambagh Court.

Drawing attention to an affidavit submitted before the court below, Mr. Mukherjee submits that manner of conducting a case by learned advocate representing plaintiff, may be one of the causes, for absence of learned advocate for the petitioners to take part in the hearing process of a particular case.

Mr. Mukherjee further submits that there is another case of Mr. Bholanath Roy, seeking eviction of a tenant, pending at Arambagh Court, which was allowed to transferred in the year 2016, by this Court in C.O.2260 of 2016 to Serampore Court, Hooghly.

Reliance is placed by Mr. Mukherjee on a decision reported in **2016 SCC OnLine Cal 4346** delivered in the case of ***Kanakkanti @ Kanak Karmakar vs. Sri Bholanath Roy & ors.*** to submit that the ratio of the decision would be squarely applied over the facts and circumstances of the case.

While making elaboration of the ratio decided in the case of ***Kanakkanti @ Kanak Karmakar (Supra)***, Mr. Mukherjee submits that there is hardly any chance of occasioning any prejudice to the plaintiff-Sebait, when there is an another case of plaintiff/Bholanath Roy *ex facie* present at Serampore Court, may be against the different defendants.

Mr. Srikrishna Samanta, learned advocate appearing for the opposite party no.1 replies denying the allegations disclosed in the affidavit touching the conduct of the plaintiff-Sebait .

It is further submitted that when the order of transfer in an eviction suit was made, the plaintiff-Sebait was much younger in age and now he has become old, and not in a position to pursue the case appropriately. In the event of the case being transferred to Serampore Court, due to old age of plaintiff/Sebait the case may not be taken care appropriately.

Thus raising the plea of comparative harassment to be caused to the plaintiff-Sebait, learned advocate for the opposite party no.1 supporting the order of the court below submits that there lies nothing to be interfered with the impugned order.

Having considered the submission of both sides, it appears that plaintiff-Sebait is being represented by the learned advocate, who is a renowned practitioner of Arambagh Court. Though there has been some allegations raised touching the conduct of the plaintiff-Sebait, but when the same has been denied, by the learned advocate representing the opposite party/plaintiff, this Court does not venture to decide the allegation and counter allegation raised, in absence of appropriate evidence. But when there is another

eviction suit pending at Arambagh Court, may be against the different defendants, this Court is of the view that if the instant case is transferred to Serampore Court that will not cause any prejudice to either of the parties to this case, and rather, it would subserve the purpose of justice.

As it is proposed by the opposite party no.1 that in the event of case being transferred to Serampore Court, there may be direction recorded so that logical conclusion of the suit may be reached at an early date. This Court is of the view that such innocuous proposal needs to be respected to.

The impugned order passed by learned District Judge, Hooghly in Misc. Case No.3 of 2022 is set aside.

The Title Suit No.24 of 2020, pending before the learned Civil Judge (Junior Division), 2nd Court, Arambagh be transferred to the court of learned Civil Judge (Junior Division), 1st Court, Serampore within fortnight from the date of communication of this order.

The transferee court upon receipt of the original case record shall proceed to dispose of the suit upon issuing notice to both the parties, so that the logical conclusion of the suit may be reached, preferably before the end of 2023, subject to the suitability and convenience of the court below, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Both parties as such are directed to ensure their appearance before the transferee court on 18th January, 2023.

Parties are directed to make communication of this order to both the courts below (transferor and transferee court).

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)