

14.9.2022
131
Ct. no. 652

CO 4212 of 2019
With
I.A. No. CAN 1 of 2020 (Old No. CAN 1756 of 2020)

Dipak Maity
Vs.
Ranendra Nath Maity

Mr. Jiban Ratan Chatterjee Sr. Adv.
Mr. Soumya Banerjee
Mr. Debabrata Mondal ...for the petitioner

This is an application under Section 24 of Code of Civil Procedure for transfer of Money Suit No. 47 of 2019 pending before the learned Civil Judge (Sr. Division) at Sealdah to any court of West Bengal preferably court at Howrah.

The opposite party instituted the suit for recovery of damage and compensation for defamation including mental pain against the defendants/petitioners herein and another person. In the aforesaid suit plaintiff described himself as a practitioner and member of Sealdah Civil Bar Association as well as Alipore Bar Association and his deceased father was also practicing Advocate in the same court. Presently, he has concentrated his practice in Sealdah Court leaving the membership of the Alipore Bar Association. However, he has been practicing in different courts as special counsel within Kolkata.

The defendant nos. 1 and 2 had constructed one multi-storeyed building where the plaintiff was offered to purchase two flats at the consideration of actual construction costs, which he afforded and the rest twenty flats of the said building were sold to different purchasers and the deed of conveyances were drafted, prepared and signed by the plaintiff. It is alleged that by the notice dated 14.02.2019 the defendant no. 1 and 2 on behalf of the firm demanded the revised rate of the monthly maintenance charges from all the flat owners with effect from 01.03.2019, which was objected by the plaintiff. In the course of time, the entire dispute regarding enhancement of the monthly maintenance charges of all the flats was referred to arbitration before the plaintiff and one Dipak Kumar Sarkar. In the meeting of the owners of flat, which was held on 16.05.2019, the issue was discussed in the presence of all flat owners but in the said meeting the defendants including their staff who were present, made controversial statements, blamed towards the plaintiff including his identity. The plaintiff was threatened with dire consequences and all the attending person including the defendant nos. 1 and 2 teased and taunted him in the meeting dated 16.05.2019. The suit was therefore, filed and learned Civil Judge(Sr. Division), Sealdah issued summon upon the petitioners/defendant nos. 1 and 2 on

03.10.2019 and directed to appear before the said court on 21.12.2019.

Defendant /petitioner receiving the summons had approached different senior lawyers to defend the proceeding but everyone straight way refused both the petitioners on the ground of fraternity. Accordingly defendant no. 1 and 2 apprehend that they will be the looser due to lack of representation before the learned court at the time of trial. Accordingly petitioners have prayed that the aforesaid Money Suit 47 of 2019, now pending before the learned Civil Judge (Sr. Division) at Sealdah be transferred to any other court within this state, preferably before the District Judges' court at Howrah where the plaintiff is not practicing, otherwise, petitioners will suffer loss and injury.

Mr. Sibnath Ganguly appearing on behalf of the petitioner /opposite party submits that in the present case petitioners stated in their petition in paragraph 5 onwards that after receiving summon they have approached to the different senior lawyers to defend the proceeding but everyone refused both of them on the ground of fraternity but petitioners have not mentioned the name of the lawyers to whom they approached, who denied to defend their case. In the absence of any subjective averment stating names of Advocates to whom petitioners had approached and were refused, petitioners' prayer cannot be entertained

as mere allegation cannot be a ground for transfer. In this context he relied upon two judgments ***Usharani Paul & another Vs Jahar Lal Paul & other*** reported in ***(2019 (4) ICC 845 (cal)*** and ***Kulwinder Kaur Vs. KFDT & others*** reported in ***2008 (2) ICC 163***.

I have heard the learned counsel for both the parties at length.

In the present case there is no allegation against the trial judge that the trial judge is influenced by presence of plaintiff who is practising Advocate of that court. It is not in dispute that defendant/petitioners reside within the jurisdiction of Sealdah court and cause of action of the suit also arose within the jurisdiction of Sealdah court and as such Sealdah court has the territorial jurisdiction to try the suit under the provision of section 20 of the code.

A coordinate Bench of this court in the aforesaid ***Usharani Paul (supra)*** case referring earlier decisions clarifies the ratio in such cases as follows:-

- i) *If a suit is proceeded with towards its culmination and in such process both parties are properly represented, the suit should not be transferred.*
- ii) *Mere allegation that a party of a suit is an advocate practising in the local Bar where the suit is pending or that he is a close relative of a party to the suit, cannot be a ground for transferring the suit until and unless it is found that there is a chance for the trial Judge of being biased and influenced as a result of very presence of such learned advocate as a party to the suit.*

- iii) *Such apprehension that the petitioner may not get assistance of any advocate in a particular bar of a particular Court where the suit is pending cannot be assessed on the basis of objective allegation.*

In the present case petitioners have not disclosed the name of advocates to whom they had approached and who denied to represent the petitioners. In the absence of such specific allegation, omnibus statement is not at all sufficient and cannot be accepted as a ground for transferring the suit from a court, who is competent to try on the ground of territoriality of the jurisdiction to some other court, who does not have territorial jurisdiction unless petitioners could make out specific case of reasonable apprehension that justice will be denied to them. The mere fact that the party has suspicion in this regard would not constitute a valid ground. Mere prejudice against a pleader who may be a party to the suit is not a sufficient ground unless it is shown that petitioners/defendants reasonably apprehends that he is not likely to have a fair trial before particular court. Here, i have already stated that no such averment is made by the petitioners that they do not have chance of getting fair trial before the court concerned.

Moreover plaintiff being *dominus litis* is entitled to file a suit before a forum, competent to try and the court should not lightly change the forum and compel him to go elsewhere.

Apex Court has also laid down certain propositions which are illustrative in nature in considering the question of transfer of a proceeding in ***Kulwinder Kaur@ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others*** reported in **2008 (2) ICC 163** which is as follows:-

“14. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.” (emphasis added)

Here no such case has been made out that defendants is not likely to have a fair trial from the court, from which he seeks transfer and as such I do not find any substance in petitioners’ prayer for transfer the case from Sealdah court to any other court only on the ground that opposite party is a

practising advocate of that court and as such the prayer is liable to be rejected.

In view of above C.O. 4212 of 2019 stands dismissed.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)