

ALP No. 9 of 2019
IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BINA DAS @ BINA HALDER
VERSUS
KAKDWIP COURT BAR ASSOCIATION AND ORS.

BEFORE:

The Hon'ble Justice **AJOY KUMAR MUKHERJEE**

For the Petitioner: Mr. Shiv Shankar Banerjee, Adv.
Mr. Ramij Munsu, Adv.

For the Respondent Nos.1 to 6: Mr. Sukanta Chakrabarty, Adv.
Mr. Anindya Halder, Adv.

For the Respondent Nos.7 to 10: Ms. Shohini Chakrabarty, Adv.
Ms. Prajaaini Das, Adv.

Heard on: **21st September, 2022.**

Judgment on: **28th September, 2022**

Ajoy Kumar Mukherjee, J.

1. This is an application under Section 24 of the Code of Civil Procedure, 1908 arising out of Clause 13 of the Letters Patent, 1865 for transfer of Title Suit No. 167 of 2019 from the Court of the learned Civil Judge, (Senior Division) at Kakdwip, South 24 Parganas to this Hon'ble Court or to any other Court in West Bengal.

2. The petitioner is a practising advocate at Kakdwip Sub-Divisional Civil and Criminal Court at 24 Parganas (South) and she became the member of the Kakdwip Bar Association on or about 2000 and since then she is practising

therein. The petitioner had undergone a forty (40) hours Mediation Training under the West Bengal Judicial Academy during the period from 25th June, 2019 to 29th June, 2019. Petitioner alleged as she had undergone the abovementioned training, the Bar Association of Kakdwip Court, represented by its Secretary, being the defendant no.2 herein, issued a show cause notice and thereafter, the petitioner's Bar Association membership was terminated, though petitioner gave reply to the respondents/defendants, in terms of the show cause notice. The petitioner alleged that she is restrained from using the facility of the Bar Association and even she is restrained from using the ladies washroom within the Court compound. Considering the situation, the petitioner filed a suit for a declaration that the meeting which was held on 26th June, 17th July and 22nd July in the year 2019 are void and ultra vires in law, which do not bind the present plaintiff in any manner, along with injunction and other reliefs.

3. Mr. Shiv Shankar Banerjee, learned counsel appearing on behalf of the petitioner, submits that the aforesaid Title Suit No. 167 of 2019 was filed on 28th August, 2019 and on the same date, the petitioner also filed petition for *ad interim* injunction. The petitioner further submits that the opposite parties appeared in the said suit who are all members of Kakdwip Civil and Criminal Bar Association and they have signed as an advocate in the Vokatnama and the only Advocate who did not sign the Vokatnama is the husband of the present petitioner. Now the petitioner is not allowed to sit within the Court premises even outside the Bar Association. Petitioner is not even allowed to sit at the adjoining area of the clerks' earmarked place. Under the instruction of the advocates of

Kakdwip Civil and Criminal Bar Association, petitioner is being denied by the typist of the said Court to type any document which belongs to the petitioner. Petitioner further submits that when the said suit was called on 28.8.2019 and 11.9.2019, the petitioner was not allowed to speak. Further more, the Bar Association moved a put up application on 6.9.2019 when also the petitioner could not speak a single word, as all the advocates of the Bar Association appeared and almost threatened petitioner with several consequences inside the court room.

4. Mr. Banerjee on behalf of the petitioner further submits that the petitioner has been threatened that the Bar /Respondents will not allow any advocate in the Court premises, to be represented on behalf of petitioner. In fact the petitioner facing extreme humiliation from her colleagues and therefore the petitioner is convinced that the petitioner will not be able to conduct the trial of the present suit in the said Court without any fear or pressure from the members of the Bar Association of Kakdwip Civil and Criminal Court. In fact the respondent nos. 2 and 4 have started using bad comments and therefore, it is extremely difficult for the petitioner to conduct the case and in fact the respondents are at very high voice shouted inside the Court room that no order can be passed against the Bar Association by the Court in session. In view of above, the petitioner submits that in order to get justice said Title Suit No. 167 of 2019 be transferred from the Court of Kakdwip to this Court.

5. Mr. Sukanta Chakraborty, learned advocate appearing on behalf of the opposite parties no. 1 to 6 submits that the petitioner herein was a member of

the said Bar Association, but she got involved in a quarrel with the ex-secretary of the Bar Association and abused him with filthy languages. Subsequently she again got involved into quarrel with another ex-secretary and the then President over each and every issue relating to functioning of the Bar Association and the petitioner time and again tried to assault the Secretary of the Bar Association. It is further alleged that during her tenure as the Secretary of the said Bar Association the petitioner herein has siphoned huge amount of money from the Bar Association. The petitioner used to withdraw money of the said Bar Association without the consent of the then executive members of the Bar Association and the situation became so worse that she resigned from the post of Secretary of the Bar Association.

6. On June 25, 2019 a meeting of the Bar Association was held and it was decided that a general body meeting of the Bar Association would be held on 26th June, 2019. In the general body meeting it was held that as the recommendation of petitioner as mediator was made, keeping the Kakdwip Court Bar Association in dark, the petitioner should step aside. It is further submitted by Mr. Chakraborty, appearing on behalf of the respondent nos. 1 to 6 that the petitioner is trying for forum shopping as because she has intentionally increased the value of the suit. The respondent nos. 1 to 6 also denied all other material allegations made in the application.

7. Ms. Sohini Chakraborty, learned counsel appearing on behalf of the respondent nos. 7 to rest, submits that the grounds of appeal as mentioned in favour of the transfer of the present case from the Court of Kakdwip to some

other Court is baseless. This is because the Trial Court is fixing the dates at regular interval and the allegations levelled against the Trial Court for prolonging litigation is not correct. In this context she relied upon a judgment reported in **1996 SCC OnLine 2 Calcutta 117** and another judgment in **Manmatha Nath Sen Vs. Gopee Ballav Sen (2 Cal Series, original civil, page 271)**.

8. Mr. Chakraborty on behalf of the said respondent referred another case law reported in **AIR 1951 Calcutta 129 (Kalidas Roy & others Vs. University of Calcutta & others)** and referred the “objective” and “subjective” tests which the courts have applied for the purpose of transferring the case under the Letters Patent. Mrs. Chakraborty also referring **Baburam Agarwalla Vs. Jamunadas Ramji & Co. (1 CAL series, original civil , page-257)** contended that it is only when there is a public sentiment in the locality, in which the Court is situate, against a litigant, then the resultant “felling” of that litigant produced by such public sentiment may be ground for transfer. That is because such public sentiment in the locality may create an atmosphere of prejudice which may engulf not merely the Court trying the cause but may pervert witness and fail to secure fearless testimony and so embarrass trial and stifle justice.

9. In the case of **Usharani Paul & another Vs. Jahar Lal Paul & others** reported in **2019 (4) Indian Civil Cases 845**, this court after considering the relevant judgments, laid down the ratio which has been clarified by the following principles.

- (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 practicing 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.

10. Needless to say that power under Section 24 or under Clause 13 of the Letter's Patent, cannot be exercised *ipse dixit*. In the present context, going through the order sheets in the aforesaid Title Suit No.167 of 2019, it appears that on the very first date of filing of the suit, the plaintiff/petitioner had filed application seeking permission to represent herself in person and such prayer was allowed by the order no.1. It further appears that subsequently, the Trial Court passed various orders on 28.08.2019, 29.08.2019, 06.09.2019, 11.09.2019, 20.09.2019 and 05.11.2019. The plaintiff/petitioner in her petition

under Section 24 had made specific allegation that the petitioner was not allowed to speak when the matter was called on 28.08.2019, 11.09.2019 and also on 06.09.2019. On perusal of order sheet, it appears that on 28.08.2019 the defendant No. 2 only appeared in that suit, and on that date the suit was only registered and the plaintiff filed requisite process fee and accordingly, the process was issued fixing 20.09.2019 as next date for service return. From the order sheet, there is no indication that the petitioner was not allowed to speak on that date. On the contrary, before the learned Court, the petitioner herself prayed for time for moving the application for temporary injunction before the Court. From the order sheet dated 06.09.2019 and 11.09.2019, it also appears that out of those two dates, 06.09.2019 was fixed for filing written objection by the defendant No. 2 and the defendant no.1 to 6 on that day filed petition praying for time to file written objection. There is also no reflection in the said order that on that date, she was not allowed to move. Similarly, it appears from order dated 11.9.2019, the plaintiff/petitioner prayed for time for fixing a date for hearing of the injunction petition and on that date none appeared on behalf of the defendants/ Bar Association in view of resolution taken by local Bar and the hearing was deferred to the next date, i.e., on 20.09.2019. Again, there is nothing in the order sheet that she was not allowed to move before the Trial Court on 11.09.2019. On the contrary, from the order dated 05.11.2019, it appears that when some of the members of the Bar filed petition to implead themselves in the defendant category, the prayer was allowed as the petitioner herein as plaintiff had given consent to it and the order was passed on consent. Accordingly, in the

above-mentioned seven orders which were passed in between 20.08.2019 to 05.11.2019, there is nothing to show that the petitioner herein who is conducting her case in person before the Trial Court, was prevented by anyone from conducting her case before the Trial Court.

11. Mere apprehension that she might not get justice from the Trial Court, or that the members of the Bar Library are not behaving well with her, cannot be a ground for transfer of 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 advocates of the Bar Library who are party to the suit. As I have already stated that the order sheets do not speak anything in support of the petitioner's apprehension that she might not get justice in the court, in which the suit is pending or that fair trial is not possible before that court and for which transfer as sought for, becomes necessary.

12. From the grounds of appeal it also appears that the plaintiff/petitioner has alleged about prolonged litigation at the cost of the plaintiff but she has not filed any document that the litigation has been prolonged by any reason whatsoever. On the contrary, it appears from the copy of the order sheets submitted by the opposite parties that the Trial Court is fixing dates at least upto 05.11.2019 within a reasonable interval. The second ground of appeal is that the respondent nos. 2 to 6 are not letting the learned Court below to proceed with the suit but the plaintiff/ petitioner has not filed any order sheet in support of the same, rather the available order sheets show that no such situation has been recorded by the Court concerned in his order. Accordingly, as alleged in the ground no.3,

threatening the Trial Court below or forcing the Court below to pass orders, which the learned court would have otherwise not passed, is merely an objective allegation having no foundation. As regards ground no.4, that unless orders are passed as prayed by the opposite parties, the Court of Civil judge (Senior Division) will be boycotted by the members of the Bar Association, also not substantiated by any document or from any order. It is also not acceptable that the case if transferred before the Hon'ble court, the hearing will be cheaper. The petitioner failed to show how the balance of convenience and inconvenience leans in her favour as she is conducting her case without any assistance of any advocate from local Bar Association and when most of the witnesses are supposed to be within the same locality.

13. In the case of ***Kulwinder Kaur Vs. Kandi Friends Educational Trust and Others*** reported in **2008 (2) ICC 163** certain broad propositions has been laid down as to what constitutes a ground for transfer. They are balance of convenience or inconvenience to the 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 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 proceedings etc.

14. Having considered the aforesaid facts and circumstances of the case and that the petitioner failed to substantiate that if the trial is continued before the

said court plaintiff is not likely to have a fair trial in the court from which she seeks to transfer the case and in the absence of specific proof that the court concerned is biased or influenced as a result of very presence of advocates who are party to the suit, I find that the apprehension made by the petitioner for not getting justice from the trial Court does not have any leg to stand. Furthermore, the other allegations levelled by the petitioner in connection with her sitting arrangement, user of wash room or the allegations that the typists and law-clerks are not co-operating with her in continuing her profession as a lawyer, are all extraneous affairs and are not connected with the issue of transfer of the present case.

15. Accordingly, I do not find any merit in the present application filed by the petitioner for transfer of the aforesaid suit from Kakdwip Court to this Hon'ble Court or to some other Court.

Accordingly, ALP/9/2019 is dismissed.

Urgent photostat certified copy, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)