

IN THE HIGH COURT OF ORISSA AT CUTTACK**TRP(C) No. 72 of 2022**

An application under Section 24 read with Section 23 (3) of the C.P.C for transfer of Civil Suit No. 387 of 2021 from the Court of learned Civil Judge (Senior Division), Angul, to the court of Civil Judge under the jurisdiction of District Court, Jabalpur (Madhya Pradesh) .

Smt. Amita Pattanayak***.....******Petitioner******-versus-***

- 1. Principal, C.D.A. (Pension),
Allahabad, Uttar Pradesh***
- 2. The Records Signals***
- 3. State Bank of India***
- 4. Assistant General Manager, State
Bank of India, Jabalpur***
- 5. Chief Manager, State Bank of
India, Gobindpura, Bhopal***
- 6. Chief Manager, State Bank of
India, Angul***
- 7. Chief Manager, State Bank of
India (CPPC), Bhubaneswar***
- 8. Amita Pattanayak***

....***Opp. Parties*****Advocates who appeared in this case through Hybrid Mode :**

For Petitioner

: Mr. P.C. Chhinchani,
Advocate

For Opp. Parties

: Mr. Akhaya Kumar Mishra Advocate
(For Opp. Parties No.3,6 & 7)
:Mr. Sourav Suman Bhuyan Advocate
on behalf of Mr Bibekananda Bhuyan
(For Opp. Party No.8)**CORAM:****JUSTICE SAVITRI RATHO**

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Date of Judgment : 21.07.2022
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Savitri Ratho, J. The question which is necessary to be decided in this application is whether a High Court has the power and / or jurisdiction to transfer a suit pending in a Court subordinate to it to another Court subordinate to another High Court.?

2. This application has been filed by the petitioner-wife under Section 24 read with Section 23 (3) of the Code of Civil Procedure (in short “C.P.C.”) for transfer of Civil Suit No. 387 of 2021 from the Court of learned Civil Judge (Senior Division), Angul, to the Court of Civil Judge under the jurisdiction of District Court, Jabalpur (M.P).

3. Notice had been issued to the opposite parties vide order dated 03.03.2022 by a co-ordinate Bench of this Court and further proceeding in the Civil Suit had been stayed. Pursuant to receipt of the notice, Opposite Parties No. 3, 6 & 7 have appeared through Mr. Akhaya Kumar Mishra, learned counsel and his associates and the Opposite Party No.8 has entered appearance through Mr. Bibekananda Bhuyan, learned counsel and his associates. Neither AD nor undelivered notice sent to Opposite parties No. 1,2,4 and 5 has been received but the postal tracking reports confirm delivery of notice on Opposite Parties No. 1 , 4 and 5. On 21.06.2022, Mr P.K.Parhi, learned ASG had appeared on behalf of Opp. Parties No. 1 and 2. No counsel has appeared on behalf of Opposite Parties No. 4 and 5 who

are officers of the State Bank of India (in short “SBI”) but Mr A.K Mishra is representing the SBI and its Chief Manager, Angul and Chief Manager CPPC , Bhubaneswar, Opposite Parties No.3, 6 and 7 respectively.

4. The case is taken up today for final disposal on the consent of the counsels.

5. Mr. P.C. Chhinchani, learned counsel for the petitioner submits that the Petitioner’s husband late Subedar Rajendra Prasad Pattanayak retired from Army in the year 2010 at Jabalpur in (Madhya Pradesh) and had settled down at Jabalpur with the petitioner along with their son, Arvind Pattanayak. He died on 15.04.2021 due to Covid-19 at Military Hospital, Jabalpur and soon after the death of husband of the Petitioner, Opposite Party No.8 claiming to be the wife of her husband, filed Civil Suit No. 387 of 2021 in the Court of the learned Civil Judge (Senior Division), Angul seeking several reliefs. Perusal of the plaint in the said suit which has been annexed as Annexure-2 to this transfer application would reveal that the cause of action and the entire alleged transactions have taken place at Jabalpur (M.P.), but the Opposite Party No.8 has mischievously filed the suit at Angul with a motive to harass the Petitioner, for which the Petitioner had approached the High Court of Madhya Pradesh by filing MCC No.

1958 of 2021 seeking transfer of the Civil Suit to Jabalpur and vide order dated 05.01.2022, the High Court of M.P. has dismissed the said application granting liberty to the Petitioner to approach the appropriate Court with an observation that since the Petitioner wants to get the suit transferred which has been filed in Odisha, the application as per Section 23 Sub Section 3 of CPC ought to have been filed at High Court of Orissa and the certified copy of the order dated 05.01.2022 has been annexed as Annexure-3 to this transfer application. Having no other alternative, this application has been filed by the Petitioner for transfer of the Civil Suit to the appropriate Court under the jurisdiction of District Court, Jabalpur as per Section 23(3) of CPC.

6. Mr. Bhuyan, learned counsel for Opposite Party no.8 relying on the decision of the Supreme Court in the case of ***Durgesh Sharma vs Jayshree*** reported in ***(2008) 9 SCC 648 : AIR 2009 SC 285*** has submitted that this Court has no power under Section 23 (3) or 24 of the C.P.C. to transfer the Civil Suit outside Orissa and the appropriate remedy of the petitioner lies in approaching the Supreme Court. The Supreme Court in the said case after discussing the provisions of Sections 23 (3), 24 and 25 of the C.P.C has held that Section 23 provides the forum where such application for transfer may be made

and Section 25 provides the power for transferring the case. His submission is that in view of the provisions of Section 25 of the C.P.C and the decision of the Supreme Court in the case of **Durgesh** (supra), this Court has no power to consider the prayer for transfer either under Section 23 (3) or Section 24 of the C.P.C and such power can only be exercised by the Supreme Court under Section 25 of the C.P.C .

7. A counter / written objection supported by an affidavit has been filed on behalf of the Opposite Parties No. 3, 6 and 7 and Mr. A.K. Mishra learned counsel appearing for them reiterates the contentions of learned counsel for the Opposite Party No.8 and further submits that the observation of the Madhya Pradesh High Court in its order dated 05.01.2022 regarding filing of an application under Section 23 (3) of the C.P.C. in this Court is an erroneous observation as Section-23(3) does not say that the High Court under whose jurisdiction a Civil Suit is lying can transfer the case to a Court under the jurisdiction of another High Court.

8. For deciding this application, it would be proper to refer to the provisions relating to transfer which are contained in Sections 22 to 25 of the C.P.C.

22. Power to transfer suits which may be instituted in more than one Court.—Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Section 23. To what Court application lies.

(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

Section 24. General power of transfer and withdrawal:

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be

heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and*
- (i) try or dispose of the same ; or*
- ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or*
- (iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.*

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;*
- (b) "proceeding" includes a proceeding for the execution of a decree or order.*

(4) the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

25. Power of Supreme Court to transfer suits, etc.-

(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other

proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.”

9. Section 22 provides that where a suit can be instituted in more than one Court, an application can be made by a defendant for determining in which of the several Courts having jurisdiction the suit shall proceed. Section 23 provides the forum where such application may be made. Section 24 contains general power of transfer of the District Court and the High Court. Section 24 (1) enables a High Court or a District Court to transfer or withdraw any suit, appeal or other proceeding pending before it or in any Court subordinate to it, try and dispose of the same or transfer or retransfer it and provides that such transfer can be made by the Court at any stage of the proceeding either on an application of a party or suo motu. Section 24 (2) empowers the Court ordering such transfer to issue directions for de novo trial or to proceed with the suit, appeal or other proceeding from the point at which it was transferred or withdrawn. Section 24 (3) declares that Courts of Additional and Assistant Judges will be deemed to be subordinate to the District Court and that the term ‘proceeding’ will include an execution proceeding of a decree or order. Section 24 (4) provides that any Court deciding a suit originally filed in a Court of Small Causes shall be deemed to be a Court of Small Causes; and Section

24 (5) provides that a suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it. Section 25 empowers the Supreme Court to transfer any suit, appeal or other proceeding from one High Court to another High Court or from one Civil Court in a State to any other Civil Court in another State throughout the country if it is expedient for the ends of justice. It also provides that in case the Supreme Court finds the application to be frivolous or vexatious, it can direct the applicant to pay compensation to any person who has opposed the application any sum, not exceeding two thousand rupees and that the law which the Court in which the suit, appeal or other proceeding was originally instituted, ought to have applied shall be the law which shall be applied to such suit, appeal or proceeding by the Court to which it is transferred .

10. There was divergence of views amongst various High Courts regarding scope of exercise of power under Section- 23 to 25, but referring to the amendment of Section 25 in the Amendment Act of 1976, the Supreme Court has very clearly discussed the law as regards procedure and the power of the High Court and the Supreme Court with regard to transfer of a case from a Court subordinate to one High Court to a Court subordinate to another High court in the case of

Durgesh vs Jayashree (supra) . In this case, the Supreme Court has inter alia :-

i) discussed and compared the provisions of Sections 23 , 24 and 25 ;

ii) compared the provision of Section 25 as it stood before the 1976 amendment, with the provisions after the amendment and

iii) referred to and discussed its own decisions and decisions of the various High Courts on these aspects;

and very categorically held that where such Courts are subordinate to different High Courts, it is only the Supreme Court which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a Court subordinate to another High Court after amendment of Section 25 of the C.P.C in the year 1976. It has held that Section 25 is 'self- contained Code' and comprises of substantive as well as procedural law on the point and allows a party to move the Court by making an application as also it empowers the Court to make an order of transfer. Analysing the provisions of Section 25 as it earlier stood, it has observed that

the Law Commission had recommended that the wide powers of transfer which were earlier given to the State Government should be conferred on the Supreme Court and such recommendation was accepted and the statement of objects and reasons contains the factors which led to substitution of Section 25. It has further clarified that the provisions of Section 23 (3) of the C.P.C will not be rendered redundant by such interpretation as the provision under Section 23 (3) of the C.P.C is only procedural and provides for filing of an application and does not bestow any power on the High Court to transfer a case. Section 23, has to be read subject to Section 25 of the Code. It overruled the decisions taking a contrary view as they did not lay down the correct law. It compared the power of transfer to the exercise of extraordinary jurisdiction by a writ Court under Article 32 or 226 of the Constitution stating that the Supreme Court can exercise power by issuing writs, directions or orders to every authority within the territory of India only and has no jurisdiction outside the country. Similarly, jurisdiction of the High Court is limited to the territory within which it exercises jurisdiction and not beyond it. On the same analogy, a High Court cannot pass an order transferring a case pending in a Court subordinate to it to a Court subordinate to another High Court and

as this would be inconsistent with the limitation as to territorial jurisdiction of the Court. The relevant portions of the judgment are extracted below :

...“46. *Having considered the scheme of the Code as amended from time to time, in our judgment, the law relating to transfer of cases (suits, appeals and other proceedings) is well- settled. It is found in Sections 22 to 25 of the Code and those provisions are exhaustive in nature. Whereas Sections 22, 24 and 25 deal with power of transfer, Section 23 merely provides forum and specifies the Court in which an application for transfer may be made. Section 23 is not a substantive provision vesting power in a particular Court to order transfer.*

47. *In our considered opinion, where several Courts having jurisdiction are subordinate to one appellate Court, an application for transfer may be made to such appellate Court and the Court may transfer a case from one Court subordinate to it to another Court subordinate to it. Likewise, where such Courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring a case from one Court subordinate to it to any other Court subordinate to that High Court. But where such Courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order of transfer. In other words, if two courts are subordinate to*

different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a Court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer.

48. *Section 25, as originally enacted in the Code of 1908 and the decisions prior to Amendment Act of 1976, have no application after substitution of Section 25 as it stands today. To us, Section 23 has no application to such cases and the only provision attracted is Section 25.*

49. *The language of Section 25 also supports the view which we are inclined to take. Sub-section (1) of Section 25 of the Code enacts that "On the application of a party", this Court may pass an appropriate order of transfer. Thus, Section 25 is 'self-contained Code' and comprises of substantive as well as procedural law on the point. It allows a party to move the Court by making an application as also it empowers the Court to make an order of transfer.*

50. *The matter can be examined from another angle also. Every Court has its own local or territorial limits beyond which it cannot exercise the jurisdiction. So far as this Court is concerned, its jurisdiction is not circumscribed by any territorial limitation and it extends over any person or authority within the territory of India. But, it has no jurisdiction outside the country. So far as a High Court is concerned, its jurisdiction is limited to*

territory within which it exercises jurisdiction and not beyond it. On that analogy also, a High Court cannot pass an order transferring a case pending in a Court subordinate to it to a Court subordinate to another High Court. It would be inconsistent with the limitation as to territorial jurisdiction of the Court.”

....“53 We are unable to uphold the contention. In our considered view, the fallacy in the argument lies in the fact that it presumes and presupposes that Section 23 of the Code is a substantive provision which authorizes a Court mentioned therein to order transfer. It is not so. The said section, as held by us, is merely a procedural one or a machinery provision and provides mode, method or manner in approaching a Court for making an application. It does not empower a Court to effect transfer. Moreover, Section 25 of the Code is a ‘complete Code’ dealing with substantive as well as procedural law. Section 23, in our opinion, therefore, cannot be interpreted in the manner suggested by the learned counsel appearing for the wife.”

..... “55. It is, no doubt, true that even when Section 25 in the present form was substituted by the Amendment Act of 1976, sub- section (3) of Section 23 of the Code has neither been deleted nor amended. That, however, is not relevant. Since in our considered view, Section 23 is merely a procedural provision, no order of transfer can be made under the said provision. If the case is covered

by Section 25 of the Code, it is only that section which will apply for both the purposes, namely, for the purpose of making application and also for the purpose of effecting transfer. On the contrary, reading of sub-section (3) of Section 23 of the Code in the manner suggested by the learned counsel for the respondent-wife would result in allowing inroad and encroachment on the power of this Court not intended by Parliament. Section 23, therefore, in our considered view, must be read subject to Section 25 of the Code. The decisions taking a contrary view do not lay down correct law. We, therefore, overrule them. Even if such power was with a High Court earlier, it stood withdrawn with effect from January 01, 1977 in view of Section 25 of the Code as amended by Code of Civil Procedure (Amendment) Act, 1976.”

11. After a close reading of the provisions of Section 22 to Section 25 of the C.P.C. and the decision of the Supreme Court in the case of **Durgesh** (supra), and considering the submissions of the counsels , I am of the view that the High Court lacks the power to transfer a suit pending in a Court subordinate to it , to a Court subordinate to another High Court. Therefore the present Transfer Application praying for transfer of the suit from the Court of the learned Senior Civil Judge , Angul, to the Court of the learned Civil Judge under the jurisdiction of District Court, Jabalpur (Madhya

Pradesh) is not maintainable in this High Court and is accordingly dismissed .

12. In the facts of the case, the petitioner could have at best applied to this Court under Section – 22 of the C.P.C. to determine in which of the Courts, the suit shall be proceeded with. The petitioner is of course at liberty to approach the Supreme Court of India under Section 25 of the C.P.C for transfer of the suit , if she is so advised.

13. The TRP(C) is accordingly dismissed as not maintainable with the aforesaid observations.

14. Interim order passed earlier stands vacated.

Urgent certified copy of this order be granted on proper application.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 21st July, 2022 / puspa