

\$~16 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 337/2022 and CM 17846/2022

SHRI MANISH KUMAR @ MANISH ABROL Petitioner
Through: Mr. Anuj Kumar Garg, Adv.

versus

SHASHI BHUSHAN KOHLI AND ORS Respondents
Through: Mr. Diwakar Singh, Adv. for R-1 and R-2
Mr. Siddhant Asthana and Mr. Chhetarpal Singh, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)
27.10.2022

1. The petitioner Manish Kumar @ Manish Abrol is the defendant in CS 12086/16 (*Shashi Bhushan Kohli v. Manish Kumar*), the plaintiff in CS 8296/16 (*Manish Abrol v. C.D. Chawla*) and Defendant 2 in CS 9599/16 (*Mohit Virmani v. C.D. Chawla*). CS 12086/16 is pending before the learned Additional District Judge ("the learned ADJ") – 01 (West), Tis Hazari, CS 8296/16 was pending before Ms. Shivali Sharma, ADJ – 03 (West), Tis Hazari and CS 9599/16 was pending before Ms. Veena Rani, ADJ – 06 (West), Tis Hazari.

2. Shashi Bhushan Kohli and Mohit Virmani together filed TP 17/21, seeking transfer of CS 8296/16 and CS 9599/16 to the Court where CS 12086/16 was pending. The impugned order dated 11th

November 2021, passed by the learned Principal District and Sessions Judge (West) (“the learned Pr DSJ”) allows the said transfer petition and transfers CS 8296/16 (*Manish Abrol v. C.D. Chawla*) and CS 9599/16 (*Mohit Virmani v. C.D. Chawla*) to the Court which is in seisin of CS 12086/16 (*Shashi Bhushan Kohli v. Manish Kumar*).

3. The petitioner Manish Kumar, aggrieved by the said order, has approached this Court, invoking the jurisdiction vested in it by Article 227 of the Constitution of India.

4. A perusal of the impugned order dated 11th November 2021 of the learned Pr DSJ reveals that pleadings have been completed in TP 17/21. On the said date, associate Counsel of the arguing Counsel who was to appear on behalf of the petitioner, sought an adjournment on behalf of the arguing Counsel as he had to attend a Parent Teachers’ Association (PTA) meeting of his child.

5. Observing that the ground urged was “no ground for adjournment”, the learned Pr DSJ has proceeded, *vide* the impugned order, to transfer CS 8296/16 and CS 9599/16, as already noted, on the ground that the issue involved “a trivial issue of law and order, which could be conveniently disposed of without prejudice to the parties”. The impugned order reveals that the learned Pr DSJ was inclined to allow the transfer petition as the three suits pertain to different portions of the same property.

6. I have heard Mr. Anuj Kumar Garg, learned Counsel for the

petitioner, Mr. Diwakar Singh, learned Counsel for Respondents 1 and 2 and Mr. Siddhant Asthana, learned Counsel for Respondent 3.

7. Mr. Garg, learned Counsel for the petitioner submits that the suit property in the three suits could not be treated as the same, as the suits pertain to different floors of one property. That apart, he submits that the learned Pr DSJ acted in undue haste in allowing the transfer petition, despite a *bonafide* request for adjournment made on this behalf.

8. As against this, learned Counsel for the respondents contend that no prejudice could have been said to have been caused to the petitioner, as the learned Pr DSJ merely ensured that all suits would be heard by one Court, and did not even direct consolidation of the suits. Inasmuch as the suits pertain to three floors of one property, learned Counsel for the respondents submit that, on merits, the impugned order was completely justified. The learned Pr DSJ had, in their submission, acted in the best interests of justice in order to obviate any possibility of conflicting decisions and in order to ensure that the suits proceeded expeditiously to their destined conclusion.

9. The impugned order having been passed on merits, after granting the petitioner an opportunity to file his response to the transfer petition filed by the respondents, it is submitted that, in exercise of its jurisdiction under Article 227 of the Constitution of India, this Court should not interfere in the matter.

Analysis

10. While exercising jurisdiction under Article 227 of the Constitution of India, this Court does not sit in appeal over the decision of the Court below. Article 227 is the constitutional manifestation of the superintending power of the High Court over the Courts lower to it in the judicial hierarchy. It is meant to be exercised only to ensure that the Courts lower in the judicial hierarchy exercise jurisdiction appropriately and within the legitimate bounds. It is merely an expression of hierarchical superiority, and nothing more. The jurisdiction vested in the High Court by Article 227 cannot, therefore, be exercised with a stick in hand, or with an intent to chastise. Due deference to the judicial authority of the “Court below” has, therefore, to inform, at all times, exercise of such jurisdiction by the High Court. Unwieldy exercise of Article 227 jurisdiction would not only lead Trial Courts to feel that their judicial orders are effectively subject to judicial approval by the High Court; it would also hamper effective and dispassionate exercise, by the Trial Courts, of the jurisdiction vested in them by law, which would fatally imperil the cause of justice.

11. Where the hierarchically lower Court appropriately exercises jurisdiction, the decisions in, *inter alia*, ***Estralla Rubber v. Dass Estate (P) Ltd¹***, ***Garment Craft v. Prakash Chand Goel²***, ***Puri Investments v. Young Friends and Co.³***, ***Sadhana Lodh v. National***

¹ (2001) 8 SCC 97

² (2022) 4 SCC 181

³ 2022 SCC OnLine SC 283

*Insurance Co. Ltd*⁴ and *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd*⁵ proscribe interference, by the High Court under Article 227 of the Constitution of India, on the ground that the order passed by the Court below was erroneous on facts or in law.

12. That said, however, where the Court below proceeds in violation of any statutory or constitutional interdict, a clear case for interference under Article 227 would be made out.

13. Section 24(1) of the CPC reads as under:

“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) retransfer the same for trial or

⁴ (2003) 3 SCC 524

⁵ 2022 SCC OnLine SC 620

disposal to the Court from which it was withdrawn.”

14. Section 24(1), on its plain reading, envisages three stages. The first is the filing of an application, the second is issuance of notice thereon to the parties *and the third is hearing of the parties who desire to be heard.*

15. It is not a matter of common statutory occurrence that a requirement of actual hearing is expressly incorporated in the statute. Where, therefore, the legislature chooses to do so, the Court has to respect the mandate and to make all efforts to ensure strict compliance therewith.

16. The grant of an opportunity of hearing is a specific statutory mandate under Section 24(1) of the CPC. This requirement *is in addition to the requirement of a notice to the parties.* As such, *grant of notice and inviting of a reply from the non-applicant party would not suffice to constitute compliance with Section 24(1) of the CPC. An independent opportunity of hearing, to be granted to those parties who desire to be heard, is the mandate of Section 24(1) of the CPC. This mandate, being statutory in nature and obviously inserted by the legislature ex debito justitiae, cannot be compromised.*

17. An opportunity of hearing, by its very nature, implies an opportunity of *meaningful* hearing. If, on *bonafide* grounds, one adjournment is sought, which is declined, it cannot be said that a meaningful opportunity of hearing was granted.

18. In the present case, an adjournment was sought by the associate Counsel who appeared on behalf of the arguing Counsel for the petitioner, for an adjournment, as the arguing Counsel had to attend the PTA meeting of his child. The request cannot be said not to be genuine, or to be unjustified, by any stretch of imagination. That being so, the learned Pr DSJ ought to have accorded the request due weight, keeping in mind the statutory requirement of grant of hearing to all parties who desired such an opportunity. The petitioner desired such an opportunity of hearing, before the transfer petition filed by the respondents was decided. He was, therefore, statutorily entitled, as a matter of right, to such an opportunity, in view of the express words of Section 24(1). No doubt, if the petitioner was recalcitrant or was seeking repeated or unjustified adjournments, the Court could justifiably reject the request and proceed with the matter. However, the rejection of the request for adjournment, which was sought on the ground that the Counsel who had to argue the matter, had to attend the PTA meeting of his child, cannot be said, in my considered opinion, to be justified. Courts must remain sensitive to unavoidable personal commitments of Counsel.

19. The impugned order, therefore, in my view, cannot be said to have been passed in accordance with the mandate of Section 24(1) of the CPC.

20. Where the statutory mandate thus stands violated, the question of whether any prejudice has resulted, as a consequence thereof, loses

significance. As far back as in *Olga Tellis v. Bombay Municipal Corporation*⁶, the Supreme has held that the requirement of compliance with the principle of *audi alterem partem* is not dependent on whether the party, who was to be heard in the matter, would, or would not have had any defence to put up. Where the law requires a hearing to be granted, it has to be granted, and meaningfully.

21. As a result, I do not deem it necessary to enter into the aspect of whether the impugned order does or does not result in any prejudice to the parties. I have already recorded, hereinabove, the submission of Mr. Garg that the three suits related to three portions, even if of one property. That apart, a reading of the reply filed by the petitioner to the Transfer Petition of the respondents reveals that the Transfer Petition was opposed on specific grounds. Whether those grounds have substance, or whether they do not, is not for this Court to consider. The impugned order, apart from having been passed without grant of any meaningful opportunity of hearing to the petitioner, does not address the contentions advanced in the reply to the Transfer Petition.

22. For all the aforesaid reasons, the impugned order is unsustainable on facts and in law. It is accordingly quashed and set aside. TP 17/21 is, therefore, remanded to the learned Pr DSJ for *de novo* consideration after hearing both sides. For the said purpose, both sides shall appear before the learned Pr DSJ on 4th November 2022. No adjournment shall be granted to any party. The learned Pr DSJ

⁶ (1985) 3 SCC 545

would hear the parties and consider *de novo* the merits of the respondents' application seeking transfer.

23. Needless to say, this Court has not expressed any opinion on the merits of the respondents' application. The learned Pr DSJ would be at liberty to take any decision on the said application as he deems fit. In the said process, the learned Pr DSJ shall not be influenced by any observation contained in the present order.

24. This petition stands allowed accordingly, with no order as to costs. Miscellaneous application is disposed of.

OCTOBER 27, 2022
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C.HARI SHANKAR, J



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