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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + CM (M) 587/2022, CM APPL. 28121/2022 and CM APPL. 28122/2022

LOVE GUPTA Petitioner
 Through: Mr. Vikas Gautam, Adv.

versus

BABY @ DINESH KUMAR
 GUPTA AND ORS Respondents
 Through:

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

JUDGMENT(ORAL)

% **03.06.2022**

1. The impugned order 11th May, 2022 passed by the learned Principal District and Sessions Judge in TP (C) 153/2019 (*Ritz Theatre v Baby*), transfers CS 81/2012 (renumbered as CS 94913/2016) (*Ritz Theatres v. Babu Ram Gupta and Anr.*) from the Court of the learned Civil Judge to the Court of the learned Additional District Judge (“the learned ADJ”), where CS 437/2017 (*Ritz Theatres v. Baby*) is pending.

2. Mr. Gautam, learned Counsel for the petitioner acknowledges the fact that his clients, i.e. Baby and others, are the legal heirs of Babu Ram and, in that capacity, are defendants in both the suits.

3. The learned Principal District Judge has transferred CS 81/2012 (renumbered CS 94913/2016) to the Court of the learned ADJ who is



in seisin of CS 437/2017 on the ground that both the suits pertain to the same immovable property, both suits claim damages in respect thereof and the core issues in both the suits is the validity of the licence and parties in both the suits were the same.

4. Mr. Gautam, learned Counsel for the petitioner, assails the impugned order on the ground that the transfer of CS 94913/2016 to the Court of the learned ADJ would needlessly protract the proceedings, as CS 94913/2016 is at the stage of final arguments whereas recording of evidence is yet to commence in CS 437/2017. He relies on an order passed by the Supreme Court in *Pal Singh v. CBI*¹, to contend that in such circumstances, the learned Principal District and Sessions Judge ought not to have transferred the former suit to the Court, which was trying the latter.

5. The power to transfer the suit from one Court to another Court vests in the learned Principal District and Sessions Judge by Section 24 of the Code of Civil Procedure, 1908 (CPC), which reads thus:

“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

¹(2005) 12 SCC 329



- (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 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 which¹[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.”

6. Clearly, there are no statutory fetters on the exercise of jurisdiction by the District Judge, while deciding to transfer a suit pending in one Court to another Court. The exercise of jurisdiction is fundamentally discretionary in nature. Of course, it goes, without saying that, as in the case of any discretionary jurisdiction, the exercise of discretion must be judicious and not arbitrary or capricious. If the exercise of discretion is injudicious, the Court could step in and interfere. Where there is no lack of propriety or



judiciousness in the exercise of discretion and the discretion **is** exercised within the peripheries of the authority lawfully possessed by the learned District Judge, no case for interference therewith, especially with in the narrow confines of Article 227 of the Constitution of India, could be said to exist.

7. I have, in my recent order in ***Chandra Prabha Mahajan v. Praveen Sharma***², already opined that where two suits are dealing with the same property, even if the exact cause of action in both the suits is not the same and even if the parties in both the suits are different, it would, nonetheless, be advisable that the two suits are decided by one Court, as it is not possible to predict the orders, which may come to be passed in the two suits, and as to whether these orders would or would not conflict with each other.

8. In the present case, both parties in both the suits are the same. The dispute in both the suits is the same. The suits deal with the same property. These are, undoubtedly, valid and germane considerations which would govern the exercise, by the learned District Judge, of the jurisdiction vested in him by Section 24 of the CPC.

9. Learned Counsel for the petitioner has, as already noted, relied on the judgment of the Supreme Court in ***Pal Singh***¹ to contend that, as CS 437/2017 was at the nascent stage, whereas CS 94913/2016 was at the stage of final arguments, the learned Principal District and Sessions Judge ought not to have transferred the latter suit to the Court

² 2022 SCC OnLine Del 1676



hearing the former. The Supreme Court in *Pal Singh*¹ was dealing with a situation in which the High Court of Uttaranchal (as it then was) had transferred the sessions case pending before the Trial Court in Uttaranchal to the Sessions Court, Ghaziabad, Uttar Pradesh. The Supreme Court observed that the High Court could not have done so without even examining whether it had the power to direct inter-state transfer. Additionally, noted the Supreme Court, in the case which was transferred, around 40 witnesses had already been examined and 15 witnesses were left to be examined.

10. That situation, in my considered opinion, cannot be analogized to the situation in the present case. Even as per the submission of learned counsel for the petitioner, CS 94913/2016 is at the stage of final arguments. Recording of evidence is, therefore, complete in the said case.

11. It would be open to the petitioner to urge, before the learned ADJ that, as CS 94913/2016 was ripe for hearing, the said suit be taken up and heard without awaiting continuation or completion of proceedings in CS 437/2017. Any such request, if made, would, no doubt, be considered by the learned ADJ keeping in view the interests of expeditious disposal of the proceedings. The learned Principal District and Sessions Judge has not directed that both the suits should be heard together. All that he has done is to transfer the suit before the hierarchically lower court to the hierarchically superior court hearing another suit, dealing with the same property, between the same parties and involving the same issue.



12. Clearly, the order does not brook any interference by this Court, in exercise of the jurisdiction vested in it by Article 227 of the Constitution of India.

13. For the aforesaid reasons, this petition is dismissed. Miscellaneous applications also stand disposed of.

JUNE 3, 2022
r.bararia

C. HARI SHANKAR, J