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

+ TR.P.(C.) 57/2022 & CM APPL. 35544/2022

VISHWABIR SHARMA

..... Petitioner

Through: Mr.Sunil K.Mittal and Mr.Harshit
Vashisht, Advocates

versus

SHAKUNTALA VASHISTH & ORS.

..... Respondents

Through: Mr.Harkirat Sawhney and Ms.Rati
Coshic, Advocates for R-2 to R-6.
Dr.Arun Mohan, Sr.Adv. with
Ms.Meghna Katari and Ms.Krati
Somvanshi and Ms.Ritika Chaubey,
Advocates for R-10 and R-11.

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Date of Decision: 08.09.2022**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. Present transfer petition has been moved under Section 24 of CPC for transfer of Civil suit bearing CS DJ No.290/2003 titled as '*Vishwabir Sharma vs. Shakuntala Vashisth and Anr.*'. This court in order dated 06.09.2022 after recording the contentions of the parties sought assistance from the Registry to report whether there is any administrative order passed by this court to the effect that if the civil cases that were being tried by the court of competent jurisdiction instituted/pending before the notification dated 28.02.2013, by virtue of which 11 civil districts were created, were required to be transferred to



the newly constituted civil districts or whether there was any direction that the pending civil suits shall continue to be tried by the courts of competent jurisdictions. Present order may be read in continuation of the order dated 06.09.2022. In the said order the facts and contentions of the parties have been recorded. The same have not been repeated herein for the sake of brevity.

2. In response to the query, the Registrar General, High Court of Delhi has filed the following report:

**“REPORT IN COMPLIANCE OF ORDER DATED 06.09.2022
PASSED BY SINGLE BENCH OF THIS HON'BLE COURT.”**

1. This report is being filed in compliance with the orders dated 06.09.2022 passed by Single Bench of this Hon'ble Court in TR.P. (C) 57/2022 & CM APPL. 35544/2022 titled "Vishwabir Sharma Vs. Shakuntala Vashisth & Ors."

2. It is respectfully submitted that consequent upon division of National Capital Territory of Delhi into 09 Civil Districts, transfer/posting order dated 22.10.2008 (Annexure-'A') in respect of Delhi Higher judicial Service (DHJS) was issued by this Court. In the said transfer/posting order, Note 3,17 & 18 read as under:-

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3. Except the category of cases (or cases, as the case may be) specifically ordered to be transferred, the entire remaining/existing work shall continue to be dealt with by the same courts (or successor courts, as the case may be) where they were pending heretofore at respective locations.

17. Fresh civil cases or matters shall be presented to, filed in or allocated in accordance with territorial jurisdiction of the respective Civil Districts.

18. Fresh criminal cases or matters shall be presented to, filed in or allocated (as the case may be) in



accordance with the jurisdiction of the respective Districts.

3. It is further respectfully submitted that consequent upon creation of 11 Districts/Sessions Division in Delhi, transfer/posting order dated 19.02.2013 (Annexure-'B') in respect of Delhi Higher judicial Service (DHJS) was issued by this Court. In the said transfer/posting order, Note 4 read as under:-

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4. Fresh cases or matters shall be presented to, filed in or allocated in accordance with jurisdiction assigned to the respective courts.”

3. It is also submitted that the note(s) appended to the aforesaid transfer/posting order dated 19.02.2013 are silent on the aspect of trial of pending civil suits in general.

4. A copy of Notification dated 28.02.2013 issued by this Court regarding functioning of the Civil Districts from the respective Courts Complexes w.e.f. 01.03.2013 is attached as Annexure-C.

5. This report is, accordingly, submitted before the Hon'ble Court for kind consideration.”

3. Perusal of the report indicates that consequent upon creation of 11 Districts/Session Divisions in Delhi, transfer/posting order dated 19.02.2013 in respect of Delhi Higher judicial Service (DHJS) was issued by this Court and in the said transfer/posting order, Note 4 provided that fresh cases or matters shall be presented to, filed in or allocated in accordance with jurisdiction assigned to the respective courts. The report also provides that order dated 19.02.2013 is silent on the aspect of trial of pending civil suits in general.
4. Learned counsel for the petitioner submits that since now the subject matter of the property falls within the jurisdiction the Principal District & Sessions Judge, South-East District, it would be correct to transfer



the civil suit pending before the learned ADJ-04 (Central), Tis Hazari Courts to the appropriate court falling within the jurisdiction of South-East District, Delhi. Learned counsel for the petitioner submits that this anomaly has to be removed to bring the trial in sync the provisions of CPC.

5. Learned senior counsel for the petitioner has further has relied upon the notification dated 19.07.2016 bearing no.F.1/3/2013-Judl./P.F./Suptlaw/671-683 whereby while reorganizing the West and South-West Civil District, it was inter alia directed that new civil cases filed on or after cut-off date, relating/pertaining to territorial jurisdiction of the eight villages, namely, Boudhela, Nangli Jalib, Posangipur, Asalat Pur Khadar, Hastal, Raja Pur Khurd, Nawada Mazara Hastal and Matiala of earstwhile West District, will be filed at the District court complex at Dwarka. Learned senior counsel submits that it was specifically directed that existing cases already filed before a cut-off date, will not be transferred and will be dealt with and adjudicated in the District Court complex at Tis Hazari. Learned senior counsel submits that in view of this notification, the present application is liable to be dismissed. Learned senior counsel has also placed reliance on the order dated 21.03.2014 passed by this court in TR.P.(C) 28/2012 titled as ***Mohit Kumar vs. Himalayan Institute Hospital Trust.***
6. Taking into account the submissions made by the parties, the position can now be summarized as under:
 - (i) Initially, a civil suit bearing CS No.2140/1997 was filed before this Court in the year 1997;



- (ii) The civil suit on account of enhancement of pecuniary jurisdiction was transferred to the court of competent jurisdiction, which was at that time, the court at Tis Hazari and suit was renumbered as CS DJ No.290/2003.
- (iii) The suit was adjourned sine die vide order dated 13.09.2004. Thereafter, an application for revival of suit was moved by the petitioner herein. The petitioner herein also moved an application under Order 39 Rule 2A CPC.
- (iv) In Civil Appeal No.9145/2012 titled as *Narayan Singh (D) through LRs vs. Sh.Bhulle*, the petitioner herein moved an application to be impleaded as intervener. The said Civil Appeal/SLP was filed by the respondents herein. This Civil Appeal/SLP emanated from a writ petition filed by the respondents before this Court.
- (v) In the meanwhile, the respondents herein moved an application under Order 39 Rule 4 CPC before the learned trial court for vacation of stay. The stay was sought to be vacated as the respondent took a plea that suit itself being not maintainable, the injunction could not have been granted.
- (vi) The report of this Court, submitted by the learned Registrar General indicates that in order dated 19.02.2013 there was a direction only to the extent that fresh cases or matters shall be presented in accordance with the jurisdiction assigned to the respective courts. Thus, there was no direction/order for the transfer of the pending civil suits to the newly constituted districts.

Findings and Conclusion:



7. The power to be exercised under Section 24 of the CPC is general power of transfer and withdrawal of the High Court. Section 24 confers power upon the High Court to transfer any suit, appeal or proceeding pending before it for trial or disposal to any court subordinate to it or to withdraw any suit, appeal or proceedings pending in any court subordinate to it or transfer the same for trial or disposal to any other court subordinate to the High court.
8. Pursuant to creation of South-East District, the court where the matter is being presently tried does not lose its jurisdiction in any manner. The court of learned ADJ-04 (Central), Tis Hazari courts continues to be the court of competent jurisdiction, as when the suit was transferred to that court by this court, that court or its successor courts continues to be the court of competent jurisdiction.
9. This Court while transferring the matter from one court to another in such like cases has to see that whether the continuation of trial in the existing court would in any manner result in either the denial of the justice to the parties or such continuation of trial would in any manner be contrary to the law. This court considers that in the present case, none of the two above conditions exist.
10. This court also considers that since the learned ADJ-04 (Central) is seized of the matter and parties have already advanced their arguments substantially on order 39 Rule 4 CPC, it would not be advisable to rock the boat at this stage. If the suit is transferred at this stage, it may only result in putting efforts again by both the parties and may also result in the delay of the further proceedings.



11. The administrative orders issued by this Court dated 22.10.2008 and 19.02.2013, indicate that except certain category of case (s) the pending civil suits were continued to be tried by the same court, where such suits were pending. Only fresh cases were ordered to be instituted in the newly carved Civil Districts.
12. With the above observations, the petition along with pending application stands disposed of.
13. It may be noted that the matter has not been heard on merits of the case and the observations made by this Court shall not tantamount to any expression made on the merits of the case.

DINESH KUMAR SHARMA, J

SEPTEMBER 8, 2022

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