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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 964/2022 & CM APPL. 40525/2022, CM APPL. 40526/2022

GEETA RAI ..... Petitioner  
Through: Mr. Praveen Suri, Adv.

versus

PAWAN KUMAR KAKARIA ..... Respondent  
Through: None

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

**J U D G M E N T (O R A L)**  
**14.09.2022**

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1. This petition, under Article 227 of the Constitution of India, assails the following order, passed by the learned Principal District & Sessions Judge ("the learned Pr. DSJ) on 5<sup>th</sup> September 2022 in TP 116/2022 (*Pawan Kumar Kakria v. Geeta Rai*):

"TP No. 116/2022  
Pawan Kumar Kakria vs Geeta Rai

05.09.2022

Present: Shri Harish Katyal, counsel for petitioner This is fresh transfer petition. It be checked and registered.

At the outset, the expressions used in the petition were explained by learned counsel for petitioner, fairly admitting that the expressions were harsh. But learned counsel for petitioner also explained at length the circumstances in which according to him the present petition was filed.



Learned counsel for petitioner explained that apprehension of bias leveled against the concerned judicial officer is not baseless and in that regard, he showed me two audio video clips in his mobile phone. Of course, conscious about the sensitive nature of those clips, the same were shown to me when the court room was empty. Learned counsel also showed me a screen shot of a Whatsapp message received by the petitioner from respondent no. 1 from mobile phone which seems to have been registered in the name of another judicial officer, who is son of the present respondent no. 1. Learned counsel also took me through order dated 27.08.2022 in the subject suit and order dated 20.07.2022 in another suit. The order dated 20.07.2022 dismissing the amendment application in the other suit is stated to have been challenged before the Hon'ble Delhi High Court.

In view of above material, a copy of this order and the transfer petition in sealed cover be sent to the concerned judicial officer with the request to send his comments by the next date.

Subject to petitioner filing PF and RC within one week, notice be issued to respondent returnable on 14.10.2022.”

(GIRISH KATHPALIA)  
PRINCIPAL DISTRICT & SESSIONS JUDGE (HQs)  
DELHI/05.09.2022”

2. The prayer clause in this petition reads as under:

“a) To call for the records of the case from the Court of Shri Girish Kathpalia, Principal District & Session Judge (HQs), District: Central, Tis Hazari Courts, Delhi in the case titled as 'Pawan Kumar Kakaria versus Geeta Rai in Transfer Petition No. 116/2022.

b) To modify/set aside the order & judgment dated 5.9.2022, passed by the Court of Shri Girish Kathpalia, Principal District & Session Judge (HQs), District: Central, Tis Hazari Courts, Delhi in the case titled as 'Pawan Kumar



Kakaria versus Geeta Rai"; in Transfer Petition No. 116 /2022 in which the comments from the judicial officer i.e. Shri Hem Raj, ADJ, District: Central, Delhi have been called without giving any fair opportunity to the petitioner being heard and to reply the same, therefore, the said order itself is perverse.

c) Costs of the present petition be also awarded in favour of the Petitioner and against the respondent.

d) Any other order as may be deemed fit and proper in view of the aforesaid facts and circumstances may also be passed in favour of the Petitioner and against the Respondent."

3. TP 116/2022, in which the impugned order has come to be passed by the learned Pr. DSJ, sought transfer of the proceedings in CS DJ 522/2020, from the court which was in *seisin* of the said proceedings to another court. The application alleged, in no uncertain terms, bias and a prejudiced attitude, by the court which was hearing the matter, against the applicant/plaintiff. Inasmuch as the aforesaid transfer petition is still pending before the learned Pr. DSJ, it would neither be proper nor advisable for this Court to express any view on the merits of the said petition. This Court, therefore, refrains from expressing any opinion in that regard.

4. A reading of the impugned order dated 5<sup>th</sup> September 2022 reveals that the learned Pr. DSJ was shown two audio-video clips and a WhatsApp message, in camera, when the court was empty. The learned Pr. DSJ has, advisedly, not adverted to the contents of the said clips or the WhatsApp message. He has merely sought for comments, from the judicial officer from whose court the respondent desired the suit to be transferred, and re-notified the matter for 14<sup>th</sup> October 2022.



5. In this context, I may observe that the impugned order reveals that the learned Pr. DSJ has merely forwarded, to the learned judicial officer concerned, a copy of the transfer petition in sealed cover along with the impugned order dated 5<sup>th</sup> September 2022. That, however, may not suffice. Inasmuch as the learned Pr. DSJ has sought to call for the comments of the learned judicial officer on the basis of the two audio-video clips and the WhatsApp message shown to him, it would be necessary for the said audio-video clips and the WhatsApp message to be also forwarded to the concerned judicial officer, so that he is aware of the material which has provoked the learned Pr. DSJ to call for his comments. That is the most basic requirement of the principles of natural justice.

6. This Court is not aware of the contents either of the audio video clips or of the WhatsApp message which were seen by the learned Pr. DSJ. In his subjective opinion – which this Court is required to respect, especially given his stature – the learned Pr. DSJ has deemed it appropriate to call for comments from the judicial officer concerned. The impugned order does not contain any observation adverse to the concerned judicial officer. It does not contain any reference to the actual contents of the audio-video clips or the WhatsApp message. All that the impugned order indicates is that the learned Pr. DSJ felt that the comments from the concerned judicial officer were necessary.

7. The impugned order is completely innocuous. The learned Pr. DSJ has acted in the best interests of justice and in compliance with the principles of natural justice and fair play. He has correctly called



for comments from the judicial officer, as he feels that the occasion requires such comments to be furnished. It is not for this Court to sit in appeal over the subjective satisfaction of the learned Pr. DSJ to call for comments from the concerned judicial officer after having seen the audio-video clips and the WhatsApp message which were shown to him.

8. As of today, there is nothing adverse against the concerned judicial officer. The outcome of TP 116/2022 cannot be predicted. It is very much possible that, having obtained comments from the concerned judicial officer, the learned Pr. DSJ may dismiss the transfer petition holding the allegation of bias against the judicial officer to be unsubstantiated. It would be completely hazardous for this Court to venture into that arena especially when the matter is presently engaging the attention of the learned Pr. DSJ.

9. Mr. Suri points out that, in CM(M) 913/2022 (***Pawan Kumar Kakaria v. Geeta Rai***), this Court has directed an application under Order XVA of the CPC, presently pending before the learned ADJ (from whose court the respondent desired the case to be transferred), to be accorded priority and to be decided before other applications were taken up.

10. Mr. Suri submits that the transfer petition filed by the respondent is intended merely to stymie the implementation of the said order and would result in protraction of proceedings before the learned ADJ. He seeks a direction from the Court to the learned ADJ to



comply with the order dated 6<sup>th</sup> September 2022 irrespective of the pendency of TP 116/2022.

**11.** It is not possible for this Court to accede to the request of Mr. Suri, apropos the order dated 6<sup>th</sup> September 2022, for issuing a direction to the learned ADJ to comply with the said order irrespective of the pendency of TP 116/2022, especially as this Court is unaware of the nature of the material contained in the audio-video clips and the WhatsApp message which were shown to the learned Pr. DSJ.

**12.** As a result, this Court does not express any view as to whether the learned ADJ should, or should not, continue with the proceedings despite the pendency of TP 116/2022. It would be open to the petitioner to request the learned ADJ to continue with the proceedings in terms of the order dated 6<sup>th</sup> September 2022 passed by this Court in CM(M) 913/2022 irrespective of the pendency of TP 116/2022. If any such request is made, the learned ADJ would take a call on this request.

**13.** The impugned order, merely having called for comments from the concerned judicial officer without having expressed any *prima facie* opinion either regarding the allegations of bias against him or the merits of TP 116/2022, the present challenge is manifestly premature.

**14.** Needless to say, the right to assail any order which may come to be passed in TP 116/2022, by any party who claims to be aggrieved therewith by means known to law would remain reserved.



**15.** The present petition is being pre-mature does not, therefore, call for any intervention by this Court. It is, accordingly, dismissed.

**16.** Subject to the aforesaid, the petition is accordingly dismissed reserving liberty as already noted hereinabove.

**C.HARI SHANKAR, J.**

**SEPTEMBER 14, 2022**

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