

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3759 of 2022

**Sunil Shaw
Vs
Zubaida Hamid and Anr.**

For the Petitioner : Mr. Tapas Kumar Mondal
Mr. Mritunjay Saha

For the Opposite parties : Mr. Wasim Ahmed
Ms. Kaynat Parveen
Md. Kashif

Heard on : 22.12.2022

Judgment on : 03.01.2023

Ajoy Kumar Mukherjee, J.

1. This is an application seeking transfer of proceeding being Misc Case 208 of 2017 along with the Misc case no. 81 of 2019 arising out of Ejectment execution Case no. 10 of 2016 in connection with Ejectment suit no. 39 of 2005, from the Court of learned Civil Judge (Jr. Division) 2nd Court at Alipore to any other court of learned Civil Judge (Jr. Division) at Alipore for disposal.

2. Petitioner contended that a cardinal point of jurisdiction pursuant to the mandatory provisions under section 8(3) and section 21 of the West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 was raised in a proceeding for eviction from Thika property being Ejectment suit no. 39 of 2005 and it was contended that section 8(3) of the said act specifically provides that the eviction suit in a Thika property is barred under the said Act. The petitioner herein filed the said Misc Case under order XXI rule 98, 99, 100, 101 read with section 47 and section 151 of the code of Civil procedure and in that Misc. Case he also filed an application under section 94 read with section 151 of C.P.C. for temporary injunction. Opposite party No. 1 being the alleged decree holder put the decree of eviction in execution through police help under order XXI rule 97 of C.P.C. being Misc case no. 208 of 2017. However, the learned judge of the executing court inspite of the repeated submissions about the question of jurisdictional point, has not disposed of the said application till date and thus the petitioner has reasonable apprehension that if the matter proceed further before that court the petitioner will not get justice. This is also because the court below has not yet disposed of the issue on the question of jurisdiction.

3. Petitioner further submits that the point for determination of the aforesaid issue is the crux of the matter and the court below deliberately and intentionally and willfully had/has been avoiding to settle that particular point and has been acting in favour of opposite party no. 1. Subsequently by order dated 20.03.2021 learned court below observed that it would be proper to

execute the decree through police help without disposing said pertinent issue. Moreover said executing court vide order dated 22.09.2022 in connection with Misc. Case No. 81 of 2019, directed the petitioner to make payment of Rs. 50,000/- as occupational charges in regard to imposition of stay against execution proceeding, being Ejectment Execution No. 10 of 2016.

4. The petitioner filed an application dated 29.09.2022 under section 151 of C.P.C. for recalling /modification of the aforesaid order no. 196 dated 22.09.2022 passed in Misc. case No. 81 of 2019 but said application was rejected by the court below. The petitioner has been getting injustice from the court below because whenever the question of jurisdiction has been agitating before court below, ignoring the same, the court below proceeded for the execution case through police help in respect of the Thika tenanted property. Accordingly it is apparent that the court below has been acting in a biased manner and there is reasonable apprehension in the mind of the petitioner that he will not get justice from that presiding officer and for which he has sought for aforesaid transfer. In this context he relied upon the case laws reported in 2009 (2) SCC 244, 2019(3) WBLR (cal) 585 and 2019 1 CLJ (Cal) 498.

5. Learned Counsel appearing on behalf of the opposite party opposed the prayer and he contended that after 13 years of legal battle, he got the decree and now in order to frustrate the execution of the decree, the petitioner herein filed applications one after another in order to drag the execution proceeding. He further submitted that the issue relating to thika property has already been disposed of by the court below and most importantly the petitioners herein

were not the parties in the said suit. He further submits that the judge of a court cannot be said to be biased, simply because the petitioner is not getting order in his favour. He further submits that they sought for information under the RTI Act and the concerned authority has replied that the property in question is not a thika property. In fact petitioners have not paid any amount towards occupational charges and whenever they are asked to pay occupational charges, they have come up with such frivolous application, which is liable to be rejected in limini with cost.

6. Having considered facts and circumstances of the case, it appears that the admitted position is that the petitioners herein were not the parties in the Suit, in respect of which present execution case has been initiated.

7. In the judgment in ***Kulwinder Kaur Vs. Kandi Friends Education Trust and Others*** reported in **(2008) 3 SCC 659** Apex Court taking into account various judicial pronouncements, certain broad proposition has been laid down as to what may constitute a ground for transfer. Paragraph 23 of the said Judgment runs as follows:-

“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by

no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the court from which he seeks to transfer a case, it is not only the power, but the duty of the court to make such order."

8. In the present case the petitioner has sought for transfer on the ground that there is reasonable apprehension in the mind of the petitioner that he might not get justice in the court in which the execution proceeding is pending.

9. It is submitted on behalf of the petitioner herein that the judgment debtor has not preferred any appeal against the judgment and decree passed in aforesaid Ejectment suit no. 39 of 2005. Opposite party submits that the petitioner are interveners and they do not have any *locus standi* to pray for aforesaid transfer of Misc. Case, when the suit decreed by the said court on the basis of its territorial jurisdiction and the execution proceeding is also pending before the said court on the basis of its jurisdiction. The petitioner has also not made out any specific case as to why the order passed by the court below is biased and what is the basis of his apprehension that he will not get justice from the court below. It may be that his various contentions were turned down including the issue of maintainability of the suit by the court below but that does not ipso facto suggest that the court is biased or there is reasonable apprehension that he is not getting justice from the court below, which can justify his prayer for transfer.

10. In view of above I do not find any substance in the petitioner's prayer, seeking transfer of aforesaid proceeding, which is a vexatious one. Accordingly the C.O. 3759 of 2022 is dismissed with a cost of Rs. 20,000/- which the petitioner will pay to the decree holder/ opposite party herein within a period of

30 days from the date of communication of this order, as condition precedent. If the petitioner failed to pay the cost within the stipulated period the petitioner will be precluded from raising any question before the court below in the execution proceeding or any other proceeding connected thereof. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)