

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9085 OF 2023

Smt. Archana Arun Patil ...Petitioner

V/s.

Rajmati Appasaheb Patil & Ors. ...Respondents

Mr. Rahul P. Kasbekar a/w Ishaan A. Kapse, for the
Petitioner.

Mr. Manoj A. Patil, for Respondent Nos.1 & 2.

Mr. Vikrant Khare, Samyak Bhatkar & Pratik Sabrad i/b
Kalyani Mangave, for Respondent No.3.

CORAM : MADHAV J. JAMDAR, J.

DATED : OCTOBER 30, 2023

P.C.:

- 1.** Heard learned counsel appearing for the parties.
- 2.** The Petitioner, who is the original Respondent No.2 in Transfer Application No.1 of 2023 is challenging the legality and validity of the order dated 20th June 2023 passed by the learned President, Maharashtra State Co-operative Appellate Court, Mumbai. By the impugned order, the said Transfer Application has been allowed by transferring the A.O. No.25 of 2022, A.O. No.27 of 2022, and A.O. No.37 of 2022 from the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune to the Maharashtra State Co-operative Appellate Court, Mumbai Bench

at Aurangabad. The said Transfer Application has been allowed, *inter alia*, on the ground that the learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune while hearing the matter had expressed that the parties should settle the dispute, and made certain observations with respect to the merits of the case.

3. The Hon'ble Supreme Court in the decision of *Gujarat Electricity Board & Anr. V. Atmaram Sungomal Poshani*¹ has held that, no party is entitled to get a case transferred from one bench to the other, unless the bench is biased or there are some reasonable grounds for the same, but no right to get a case transferred to any other bench can legitimately be claimed merely because the judges express opinion on the merits of the case on the conclusion of hearing. The said decision is reiterated by the Hon'ble Supreme Court in *Bhajan Lal, Chief Minister, Haryana V. M/s Jindal Strips Ltd. & Ors.*². The Gujarat High Court in the decision of *Rajkot Cancer Society V. Municipal Corporation, Rajkot*³ has held as follows :

“It must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient

1 (1989) 2 SCC 602

2 (1994) 6 SCC 19

3 1987 SCC OnLine Guj 29 : AIR 1988 Guj 63

cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another has to be exercised with due care and caution bearing in mind that there should be no unnecessary, improper or unjustifiable stigma or slur on the Court from which the case is transferred.”

(Emphasis added)

4. A learned Single Judge of the Karnataka High Court in the decision of *Sangeetha S. Chugh V. Ram Narayan*⁴ has held as follows :

“As regards the second point, in the course of the trial of any case, when the matter is being heard, the Presiding Officer might express some opinions so as to elicit further information from the contestant. It does not mean that he would have made up his mind with respect to the decision to be taken in the case. When discussions are held and arguments are heard, a Presiding Officer is entitled to disclose his mind so that the respective counsel can follow the trend of the Court and offer an appropriate explanation or reply. Such discussion only helps to clear the disputed questions in the case. It is too much to say that if any statements are made, it means that the Presiding Officer has made up his mind with

4 AIR 1995 Kar 112

respect to the decision in the case. If this be the position, no case can be heard by any Court. It cannot be expected that the Judges should be silent without expressing any opinion. A sphinx like attitude is not expected from the Presiding Officer especially when he is trying a Matrimonial Case or litigation between very near relation. There should be an effective discussion, an effective attempt to conciliate and an effective attempt to clarify the misunderstandings so that the disputes can be settled or a just and proper decision can be taken by the Presiding Officer. If in that process, the Presiding Officer makes any comments on merits of the case, it cannot be misunderstood as an expression of the decision. As regards the order refusing to summon document, it is a judicial exercise of power. That cannot be a ground for transfer.”

(Emphasis added)

5. In view of the above settled legal position, Mr. Patil, learned counsel appearing for Respondent Nos.1 and 2 states that he has instructions to withdraw the said Transfer Application No.1 of 2023. Respondent No.2-Abhinandan Appasaheb Patil, who is personally present in the Court, states that Respondent No.1 is a senior citizen aged 71 years and she is not present in the Court, however, she has instructed him and she also agrees to withdraw the said Transfer Application.

6. As the said Transfer Application itself is withdrawn, the order dated 20th June 2023 of the learned President,

Maharashtra Co-operative Appellate Court, Mumbai passed in the said Transfer Application No.1 of 2023 is quashed and set aside, and the said Transfer Application No.1 of 2023 is disposed of as withdrawn.

7. As the record of the Transfer Application No.1 of 2023 has been called by this Court by order dated 17th October 2023, the said record be transferred to the Maharashtra State Co-operative Appellate Court, Mumbai.

8. Pursuant to the impugned order dated 20th June 2023 passed by the learned President, Maharashtra State Co-operative Appellate Court, Mumbai in Transfer Application No.1 of 2023, the record of A.O. No.25 of 2022, A.O. No.27 of 2022, and A.O. No.37 of 2022 are transferred to the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Aurangabad.

9. The registry of the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Aurangabad, is directed to re-transfer the entire records of A. O. No.25 of 2022, A.O. No.27 of 2022, and A.O. No.37 of 2022 to the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune.

10. All the parties in the said A.O. No.25 of 2022, A.O. No.27 of 2022, and A.O. No.37 of 2022 to appear before the concerned learned Member of the Maharashtra Co-operative Appellate Court, Mumbai Bench at Pune on 4th December 2023.

11. The concerned learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai bench at Pune to decide the said A.O. No.25 of 2022, A.O. No.27 of 2022, and A.O. No.37 of 2022 after hearing arguments afresh. The learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai bench at Pune is requested to dispose of all these matters expeditiously, and in any case, on or before 31st March 2024.

12. The Writ Petition is disposed of in the above terms, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]