

April 24, 2024
Sl. No.A 719
Court No.19
s.biswas

CO 2571 of 2022
Harish Kapoor
vs.
Anil Kapoor and others

Mr. Manwendra Singh Yadav
Ms. Saswati Chatterjee
Ms. Satabdi Naskar (Kundu)

... for the petitioner

Mr. Ranabir Roy Chowdhury
Mr. Prasun Mukherjee
Ms. Kanchan Roy
Ms. Rajkumari Priyanka Devi
Mr. Subhamoy Dutta

... for the opposite party no.1

Mr. Amritam Mandal
Ms. Ananya Chakraborty
Ms. Shipra Naskar

... for the opposite party nos.2, 3 & 4

The defendant/petitioner prays for transfer of the Title Suit No.40 of 2016, which is pending before the learned Civil Judge (Senior Division), South 24 Parganas at Alipore, to the Hon'ble High Court at Calcutta and for analogous trial with PLA 50 of 2020.

The petitioner relies on the decision of the Hon'ble Division Bench of this court in the matter of **Sri Lachmi Narayan Jute Manufacturing Co. Ltd. vs. Deep Narayan Singh** reported in 1955 SCC OnLine Cal 119, in support of the contention that the High Court can always withdraw the suit from the sub-ordinate court and hear the matter, on the basis of the application under Section 24 of the Code of Civil Procedure. The Hon'ble Division Bench observed that option for such transfer under Clause 13 of the Letters Patent Act was also available, but it would be unjustified in refusing the petitioner any

relief to which he was entitled, merely because he had chosen to proceed under Section 24 of the Code instead of proceeding under Clause 13 of the Letters Patent Act. The relevant portion of the decision is quoted below:

5. It is contended by Mr. Mitter on behalf of the opposite party that in any case a prayer of transfer of the suit from, the Hooghly Court to the Original Side should properly be made under clause 13 of the Letters Patent and dealt with, by the Judge dealing with such matters and that it will not be proper for us to take any action in, this matter under section 24 of the Code of Civil Procedure. Section 24 provides, among other things, that “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 may at any stage withdraw any suit, from any Court subordinate to it and try or dispose of the same”. The Hooghly Court being a Court subordinate to this Court, the High Court can clearly withdraw the suit from the Hooghly Court. It is equally clear that after such withdrawal the High Court can try and dispose of the same. When this has to be done, it is obvious that the trial has to take place before a Judge sitting on the Original Side of this Court. That is, however, no reason why the application cannot be made under Section 24 of the Code of Civil Procedure and an order cannot be made thereunder. We agree that an application can also be made for such transfer under clause 13 of the Letters Patent. We do not think, however, that we would be justified in refusing the petitioner the relief to which we think he is entitled, merely because he has chosen to proceed under section 24 of the Code of Civil Procedure instead of proceeding under clause 13 of the Letters Patent. Authority for this view can be found in the case of *Srirangam Municipality v. R.V. Palani-sami Pillai*, (1) [I.L.R. (1951) Mad.897].

Certain issues are not in dispute. The proceedings in the High Court and before the learned Civil Judge (Senior Division), 1st Court at Alipore are

between the same parties. The properties connected to the proceedings are the same.

Learned advocates for the opposite party/plaintiff and other opposite parties do not contradict such contentions of the learned advocate for the petitioner that there are similarities in the subject matter as also as to the identity of the parties contesting the proceedings before the courts.

Under such circumstances, this is a fit case where Title Suit No.40 of 2016 should be transferred to the High Court for a decision and trial in the Original Side of the High Court along with PLA 50 of 2020.

Learned District Judge, South 24 Parganas at Alipore is directed to transmit the records of the suit within two months, to the Registrar, Original Side of the High Court at Calcutta and the records shall be placed before the appropriate Bench taking up such suits. The parties may make a joint prayer before the learned competent court for analogous trial of the suit with PLA 50 of 2020.

The application stands disposed of accordingly.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)