

2024:PHHC:101037

144 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4333-2024

Decided on:-06.08.2024

Durga Parshad

....Petitioner..

VS.

Shree Sanatan Dharam Sabha (Regd.)

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kashish Garg, Advocate
for the petitioner.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 23.07.2024 passed by the District Judge, Bathinda, whereby, an application moved at the instance of petitioner-tenant, seeking transfer of ejectment petition bearing RP-71-2015, titled as “SSD Sabha, Bathinda vs. Durga Parshad”, filed at the instance of respondents-landlord, stands declined.

2. Impugning the aforesaid order, learned counsel for the petitioner submits that the application moved on behalf of petitioner-tenant could not have been decided without issuance of notice. He further submits that ejectment petition filed by respondent-landlord against one similarly placed tenant already stands allowed by the same judicial officer/Rent Controller on the identical grounds of bonafide necessity and thus, the

ejectment petition against the petitioner was required to be transferred.

3. I have heard learned counsel for the petitioner and gone through the paper book.

4. Section 24 of the Code of Civil Procedure, 1908, which is relevant for the purpose of deciding the present petition, is reproduced hereunder:-

“Section 24:-**General power of transfer and withdrawal—**

(1) *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 or the District Court may at any stage—*

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) *Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [14][is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. [15] [*

(3) *For the purposes of this section,— (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) "proceeding" includes a proceeding for the execution of a decree or order.]*

(4) *the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.*

[16]

(5) *A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”*

A perusal of Section 24 of the Code of Civil Procedure, nowhere contemplates issuance of notice of transfer application, in case, the Court concerned upon examination of application and the affidavit in support besides the submissions made on behalf of the applicant as well, is not convinced to exercise jurisdiction of ordering transfer of proceedings. Notice only needs to be issued to the other side on a *prima facie* satisfaction of the Court concerned before passing any order of transfer of suit/appeal or other proceedings. In case, the competent Court while exercising powers of transfer is not even *prima facie* convinced, notice of application is not required to be served upon other side as it would mere be futile exercise.

5. As regards the adjudication of another ejectment petition filed at the instance of respondent-landlord (Sabha) against some other tenant and passing of the ejectment order accepting the plea of *bona fide* necessity of the landlord, in the absence of any *malafide* been attributed to the concerned judicial officer, the same cannot be treated to be a valid ground for the transfer of the subsequent pending ejectment petition from the said Court.

6. Considering the aforesaid, the present petition is dismissed.

06.08.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No