



2024:DHC:1325



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TR.P.(C.) 31/2024 & CM APPL. 9944/2024, CM APPL. 9945/2024

MUSARRAT

.... Petitioner

Through: Ms. Sumita Hazarika, Mr.
Mayank Yadav and Mr. Prabhat Yadav,
Advs.

versus

ASIF KHAN

.... Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T (O R A L)**

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19.02.2024

1. This is a transfer petition under Section 24 of the Code of Civil Procedure 1908 (CPC) seeking transfer of Guardianship Petition No. 55/2019 (*Musarrat v. Asif Khan*), pending before the Family Court, South District, Saket Court, New Delhi to another court of competent jurisdiction in the South District/South East District (Saket Courts) or the New Delhi District.

2. The petitioner is engaged in a litigation for custody of her minor children. Only two grounds have been urged by Ms. Hazarika, learned Counsel for the petitioner to justify the prayer for transfer.

3. The first is that during the course of cross examination, the



Presiding Judge, from whose court transfer is sought, had remarked several times that the petitioner may keep fighting for her children's custody for years but she would never be able to obtain custody. It is asserted that the said remarks have resulted in serious apprehension in the mind of the petitioner and made her believe that the judge has prejudged the outcome of the trial.

4. Learned Counsel for the petitioner secondly draws my attention to the record of cross examination of PW-1, the petitioner, and to the following court observations contained therein:

“Court observation: The present petition is regarding the custody of the minor children, but it has been observed that in the affidavit of the evidence of the petitioner she has mentioned so many facts about tortured upon her but the same are irrelevant by considering the custody of the minor children and the same shall be read in evidence.”

5. Neither of these assertions, in my considered opinion, can make out a case for transfer on the ground of apprehended bias on the part of the judge who is hearing the matter.

6. Transfer of a case from one court to another on the ground of bias is an extremely serious matter. It is ordinarily never to be done unless there is positive evidence of bias on record. The Supreme Court has, time and again, advised the High Courts to be mindful of the fact that any adverse observation, even if casually made, against a judicial officer in the district judiciary, can have serious repercussions on the officer and can completely demoralise her, or him, thereby seriously affecting her, or his, capacity to discharge her or his judicial duties



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without fear or favour, affection and ill-will, which is what every judicial officer is required to do.

7. Apprehensions by a litigant are a part of the litigative process. Apropos prejudicial observations made by a judge in Court during the hearing of a matter, undoubtedly, if the observation is such as to justify a reasonable apprehension of bias in the mind of the litigant, a prayer for transfer of the matter would be justified, on the classical principle that justice must not only be done but be seen to have been done.

8. For this, however, there must be some evidence to indicate that such an observation was made. The Court cannot act on a mere statement in a petition to come to an inference that the judge hearing the matter is biased. If such a practice is to be allowed, it would open floodgates for every litigant, who is unhappy with the manner in which a case is proceeding, to come to the court with an unsubstantiated averment that a judge has made oral observations against her, or him, in court, which raises serious apprehensions about the impartiality of the judge. On the basis of such averments made in a petition, if powers under Section 24 of the CPC are exercised and matters transferred from one court to another, it would provide a *carte blanche* for unscrupulous litigants to get matters transferred from courts which appeared to be them not to be convenient.

9. I am not, for a minute, doubting the *bonafides* of the petitioner. She may have an apprehension about the impartiality of the judge hearing the matter. Every apprehension cannot, however, be a ground



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to transfer the matter from a court. Particularly in family matters, where divorce or custody of children are involved, emotions run high, and the slightest observation by a court may result in one or the other party feeling apprehensive whether she or he would obtain justice at the hands of the concerned judge.

10. Judges cannot, however, afford to be mute spectators. Observations made during hearing may even disclose the state of mind of the judge at that point of time. It is, however, one of the cardinal attributes of a judge that he must, at all times, be flexible and willing to alter his view if he finds that it is not correct. An observation made during hearing may not reflect the final view of a judge on the matter.

11. Judges are supposed to be made of stern stuff. They are not expected to be carried away by any observations that they may make in the course of proceedings.

12. This is quite apart from the fact that, in the present case, there is nothing to indicate that the presiding officer hearing the case of the petitioner ever made the allegedly prejudicial observations attributed to him in this transfer petition. An unsubstantiated averment of such observations having been made can never constitute a justifiable basis to transfer the matter from the Court to another.

13. Insofar as the record of cross-examination is concerned, the observations extracted in para 3 *supra* merely record the opinion, of the judge concerned, that the facts stated in the affidavit of evidence of the petitioner may be irrelevant insofar as the aspect of custody is



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concerned.

14. This Court, in the present petition, is not required to opine on whether such an observation ought, or ought not, to have been made. Suffice it to state that the mere fact that such an observation was made cannot by any stretch of imagination be regarded as enough to justify transfer of the matter from the court where it is pending to any other court on the ground that the judge is biased in his approach towards the petitioner.

15. Needless to say, if the petitioner is aggrieved by any observation made by the learned Judge hearing the matter, or any order passed by him or her, the petitioner would be within her rights in moving any court of competent jurisdiction, against any such observation or order, either by way of appeal, revision or even under Article 227 of the Constitution of India.

16. Though learned Counsel for the petitioner has beseeched the Court to at least issue notice in the petition, I cannot close my eyes to the effect of issuing notice in a petition which alleges apprehension of bias on the part of a Judge. Where a petition alleges bias on the part of a judicial officer, the Court cannot issue notice as a matter of course. Even issuing of notice in such a petition reflects a *prima facie* opinion of this Court that there may be some substance in the allegation which requires consideration.

17. The very formation of such an opinion can have far-reaching



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effects on the officer concerned. It is only in the rarest of cases, in my opinion, that the Court should even issue notice in a matter in which transfer of a proceeding from a Court is sought on the ground of perceived bias on the part of the judicial officer hearing the matter. The standard required to be established, even for issuance of notice, is extremely high.

18. In my considered opinion, this case does not meet that standard.

19. Needless to say, the present order has been passed only for considering the prayer for transfer. This Court should not be regarded as having made any observation even cursorily, on either the *bonafides* of the petitioner or the merits of her case. The learned Judge hearing the matter would not be influenced by any observation contained in this order while proceeding with the matter.

20. The writ petition is disposed of accordingly.

C. HARI SHANKAR, J.

FEBRUARY 19, 2024

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[Click here to check corrigendum, if any](#)