



2024:DHC:6577



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 01.08.2024***Pronounced on: 30.08.2024***+ **TR.P.(C.) 84/2024 & CM APPL. 28466/2024****DELHI PUBLIC SCHOOL SOCIETY AND ANR.**

....Petitioners

Through: Mr. Puneet Mittal, Senior
Advocate with Mr. Rupendra
Pratap Singh and Ms. Sakshi
Mendiratta Advocates

versus

VIJAY JYOTI BAKSHI

.....Respondent

Through: Mr. Tarun Sharma, Mr. Abid
Ali and Mr. Manek Sharma,
Advocates

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of the instant transfer petition, filed under Section 24 of the Code of Civil Procedure, 1908 [**'CPC'**], the petitioners seek transfer of suit bearing CS No. 491/2019 titled as '*Vijay Jyoti Bakshi v. Govt. of NCT. of Delhi and Ors.*' from the Court of learned Additional District Judge-01, New Delhi District, Patiala House Courts, Delhi, to the Court of learned District Judge-07, Southeast District, Saket Courts with a prayer that the said suit be tried along



with CS No. 154 of 2024 titled as '*Delhi Public School Society and Anr. v. Vijay Jyoti Bakshi*'.

2. The petitioner no. 1, Delhi Public School Society, is a society registered under the Societies Registration Act, 1860, having its registered office at F-Block, East of Kailash, New Delhi-110065. The petitioner no. 2, Delhi Public School R.K. Puram, is one of the schools established by petitioner no. 1 in New Delhi for the purposes of imparting education to children. The respondent herein is a former teacher i.e. PGT (Hindi) of petitioner no. 2 school [*the School*].

FACTS OF THE CASE

3. Brief facts of the case, as disclosed from the petition, are that the respondent had joined the School as a senior Hindi teacher (Grade IV) on 01.07.1985 and had superannuated from the School on 30.09.2021. During the term of employment of the respondent at the School, she was allotted one of the quarters, being Flat. No. 16 in the residential accommodation built by petitioner no. 1 in F Block, East of Kailash, New Delhi *vide* allotment letter dated 28.11.1995. The said allotment, in favour of the respondent, had taken place *vide* license agreement dated 17.08.1995 [*'License Agreement'*] which was entered into between the petitioner no. 1 Society and the respondent herein. It is stated that the respondent has been in the occupation of the official residential accommodation since December, 1995. It is stated that the license agreement was initially executed for a period of three years, however, it continued until 23.01.2019 when it was revoked by the Working Committee of the



petitioner no. 1 Society as per clause (4) of the License Agreement, on account of misconduct and inappropriate behaviour of the respondent and her relatives with the security personnel of petitioner no. 1 society, among other reasons. It is stated that the respondent was given one month notice to vacate the official residential accommodation and consequently, she was under an obligation to remove all her articles, goods, etc. from the official residential accommodation, on or before 22.02.2019 as per clause (6) of the License Agreement, however, the respondent failed to do so, and has thus been in the unlawful occupation of the official residential accommodation since 22.02.2019, till date. It is stated that since the respondent failed to remove all her articles, goods, etc. from the official accommodation, the School was authorized by the petitioner no. 1 Society to deduct monthly market rent from the salary of the respondent w.e.f. March, 2019. The School on 13.03.2019 had addressed a letter to the respondent informing her that market rent, to a tune of Rs. 50,000/- per month, shall be deducted from her salary, subject to adjustment of Rs. 23,184/- and Rs. 235/- as H.R.A. and License Fee, respectively, per month w.e.f. 01.03.2019.

4. It is stated that aggrieved with the license termination notice dated 23.01.2019, the respondent had preferred a writ petition before this Court, i.e. *W.P. (C) 1637/2019*. By way of order dated 19.02.2019, this Court clarified that the respondent will not be evicted from her official residential accommodation, except by following due process of law. However, the said writ petition was subsequently withdrawn by the respondent on 07.03.2023 without



any orders being passed by this Court. It is stated that the respondent had preferred another writ petition i.e. *W.P. (C) 5049/2019* before this Court, challenging the letter dated 13.03.2019 *qua* deduction of monthly market rent of Rs. 50,000/- from respondent's salary. It is stated that no interim relief was granted to the respondent in the said writ petition, and the same was withdrawn by the respondent on 07.03.2023.

5. The petitioners state that during the pendency of the aforesaid writ petitions, the respondent herein had filed a civil suit for perpetual and mandatory injunction, challenging the license termination notice dated 23.01.2019 and the demand notice dated 13.03.2019, at Patiala House Courts, New Delhi. The said suit was registered as CS No. 491/2019, titled '*Vijay Jyoti Bakshi vs. GNCT of Delhi and Ors.*', which is pending adjudication before the Court of learned Additional District Judge-01. It is stated in this suit, the Management Committee of the School was arrayed as defendant no. 2, erstwhile Principal of the School was arrayed as defendant no. 3 and petitioner no. 1 Society herein was arrayed as defendant no. 4. It is stated that *vide* order dated 06.06.2019, the learned Additional District Judge opined that since this Court in *W.P. (C) 1637/2019* did not grant any interim protection to the respondent, rather only directed that she will not be evicted from her official residential accommodation except by following due process of law, no case was made out for restraining the petitioners herein from deducting a monthly market rent of Rs. 50,000/-, subject to adjustments from the



salary of the respondent. However, this order was set aside by this Court in *FAO 128/2020* vide judgment dated 08.04.2021.

6. The case of the petitioner, now is that the respondent has retired and is no longer an employee of the School w.e.f. 01.10.2021. It is stated that the School did not deduct the monthly market rent from the salary of the respondent as long as she was an employee of the school, in view of the judgment dated 08.04.2021 of this Court in *FAO 128/2020*. However, it is stated that respondent is now not an employee of the School and is thus under an obligation to remove her articles, goods, etc., from the official residence and further liable to pay the monthly market rent towards the unauthorized and illegal occupation of the official residential accommodation from the date of her superannuation. It is therefore stated that the petitioners were constrained to file a civil suit for mandatory injunction, recovery of use and occupation charges and *mesne* profits, against the respondent, before the learned District Judge-07, South-East District, Saket Courts, Delhi. The said suit was registered as *CS No. 154/2024*, titled as '*Delhi Public School Society and Anr. vs. Vijay Jyoti Bakshi*'.

7. The petitioners now pray for transfer of the suit filed by the respondent before Patiala House Courts, to the Saket Courts where the petitioners herein have filed the suit, so that both the suits can be tried and decided together.

SUBMISSIONS BEFORE THIS COURT

8. **Learned Senior Counsel appearing on behalf of the petitioners** argues that the dispute between the parties in both the



suits, i.e. *CS No. 491/2019* (pending before Patiala House Courts, New Delhi District) and *CS No. 154 /2024* (pending before Saket Courts, South-East District) is *qua* the same official residential accommodation, bearing no. Flat no. 16, DPS Staff Flats', F-block, East of Kailash, New Delhi-110065. It is stated that this official residential accommodation is located in the South-East District, which is within the jurisdiction of learned District Judge-07, Saket Courts, South-East District, Delhi. It is argued that the learned Additional District Judge-07 at Patiala House Courts, New Delhi District, is not competent to pass the decree, *inter alia*, of mandatory injunction in respect of the official residential accommodation located in South-East District.

9. It is further contended that due to commonality of facts *inter se* same parties in both the suits, any contradictory finding on facts by either of the learned Judges shall cause great prejudice to the parties, even though the suits are based on different causes of action and the reliefs claimed by the parties are different. It is stated that in order to avoid any contradictory decision, the two suits ought to be tried together. It is also stated that execution of a decree, if any is passed by learned Additional District Judge-07 Patiala House Courts, shall be within the jurisdiction of South-East District only.

10. Thus, it is prayed that the present transfer petition be allowed.

11. On the other hand, **learned counsel appearing on behalf of the respondent** argues that there is no merit in the present petition, and the suit filed by the respondent, was filed way back in the year 2019, in contrast to the suit filed by petitioner in the year 2024. It is



argued that there are no grounds warranting exercise of discretion under Section 24 of CPC by this Court, as the issues before the Courts in these two civil suits are different. It is further submitted that the suit filed by the respondent, in the year 2019, is at an advanced stage of defence evidence and if at all the two suits are to be tried together, the suit filed by the petitioner before Saket Courts, South-East District be transferred to Patiala House Courts, New Delhi District.

12. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record.

ANALYSIS & FINDINGS

13. The short issue that arises for consideration in this case, is whether there are reasonable and justifiable grounds to transfer the proceedings arising out of CS No. 491/2019, pending before Patiala House Courts (New Delhi District), to Saket Courts (South-East District) where the proceedings arising out of CS No. 154/2024, are pending, along with a direction that the two suits be tried and decided together.

14. To adjudicate the issue in question, this Court has perused the prayers sought in both the aforementioned civil suits.

15. In *CS No. 491/2019*, pending before Patiala House Courts (New Delhi District), the plaintiff therein i.e. the respondent herein has sought following reliefs/prayers:



“In the above-mentioned Facts & Circumstances, the Plaintiff above named most respectfully prays that this Hon'ble Court in the Interest of Justice:

a. may kindly be pleased to perpetually restrain the Defendants, more particularly the Defendants No. 2 to 4 from interfering with the lawful & peaceful possession of the Plaintiff in respect of the Official Residential Accommodation bearing Flat No. 16, DPS Staff Flats, East of Kailash, New Delhi 110065.

b. may also permanently restrain the Defendants No. 2 to 4, more particularly the Defendant No.3 Principal: Delhi Public School R.K. Puram, from deducting the alleged monthly market rent of Rs. 50,000/- from the periodic salary of the Plaintiff for the Official Residential Accommodation bearing Flat No. 16, DPS Staff Flats, East of Kailash, New Delhi 110065

c. may also mandatorily vide an Injunction Order direct the Defendant No. 1, Director of Education, Government of National Capital Territory of Delhi, along with the Defendant Nos. 2 to 4, Managing Committee & Principal of the Delhi Public School R.K. along with the Delhi Public School Society, to immediately refund the amount of Rs. 1,50,000/- along with the accrued interest thereupon payable from the respective dated of the arbitrary & illegal deductions having being made of the alleged Monthly Market Rent in breach of the service Conditions from the Monthly Salary of the Plaintiff;

d. may also direct the Defendant No. 3, the Delhi Public School Society, to be permanently restrained from interrupting the smooth Water Source to the Official Residential Accommodation of the Plaintiff bearing Flat No. 16, DPS Staff Flats, East of Kailash, New Delhi 110065;

e. may also direct the Defendant No. 4, BSES Rajdhani Power Limited, for being perpetually restrained from disconnecting the Electric Supply received vide Connection bearing C.A. No. 101967991 at the Official Residential Accommodation bearing Flat No. 16, DPS Staff Flats, East of Kailash, New Delhi 110065

f. may also further direct the Defendant No. 6, Indraprasatha Gas Limited, to be permanently restrained from disconnecting the Cooking Gas Supply provided under Consumer bearing B.P. No. 40001886 to the Official Residential Accommodation bearing Flat No. 16, DPS Staff Flats, East of Kailash, New Delhi 110065;



g. also grant pendente-lite along with the future interest 18% per annum on the decree amount in favour of the Plaintiff and against the Defendants;

h. kindly allow the cost of the civil suit in favour of the Plaintiff and against the Defendants; and..."

16. A reading of the plaint filed in the above suit reveals that the grievance of the plaintiff, i.e., the respondent herein, in a nutshell, is that when she had raised issues regarding the alleged irregularities in granting an extension to one Smt. Vanita Sehgal as the Principal of the School beyond the age of sixty, the School and its management had started harassing the respondent herein by issuing notices, including a letter asking her to vacate the premises in question. Thereafter, the School had further begun deducting the monthly rent of the premises from the respondent's salary in an alleged illegal manner. Consequently, she had sought the reliefs as extracted in the preceding paragraph.

17. On the other hand, in *CS No. 154/2024*, pending before Saket Courts (South-East District), the plaintiff therein i.e. the petitioners herein, have sought the following reliefs/prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

i) Pass a decree of mandatory injunction in favour of the Plaintiffs and against the Defendant, directing the Defendant to remove all her articles, goods, etc. from the property bearing "Flat No. 16, Delhi Public School Staff Flats, F-Block, East of Kailash, New Delhi - 110065";

ii) Pass a decree of Rs. 25,00,000/- in favour of the Plaintiffs and against the Defendant;

iii) Pass a decree of mesne profits @ Rs. 1,00,000/- per month in favour of the Plaintiffs and against the Defendant, from the date of filing of the suit till the Defendant removes all her



articles, goods, etc. from the suit property bearing "Flat No. 16, Delhi Public School Staff Flats, F-Block, East of Kailash, New Delhi - 110065". The Plaintiffs undertake to pay the court fee on the same at the time of passing of the decree;

iv) Pass a decree of mandatory injunction in favour of the Plaintiffs and against the Defendant, directing the Defendant to clear all the electricity and water bills before vacating the suit premises;

v) Award cost of the suit in favour of the plaintiffs and against the Defendant;

vi) pass any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in favour of the Plaintiffs and against the Defendants."

18. The grievance of the plaintiffs in the above suit, in summary, is that despite the respondent herein being superannuated from the School in September 2021, she did not vacate the premises in question, which had been licensed to her as official residential accommodation, and continues to unlawfully occupy the premises. As a result, they seek her eviction and the payment of monthly rent for the period after her association with the School as a teacher had ceased.

19. Now, to ascertain as to whether a case for exercise of discretion of transferring of suit from one District to another District is made out or not, it shall be relevant to take note of Section 24 of CPC, which provides for transfer and withdrawal of suits. It reads as follows:

"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 [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(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.

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

20. In case of *Indian Overseas Bank v. Chemical Construction Company* (1979) 4 SCC 358, the Hon’ble Supreme Court has held that the principle governing the general power of transfer and withdrawal under Section 24 of CPC is that the plaintiff is the *dominus litis* and as such entitled to institute his suit in any forum which the law allows him, and the Court should not lightly change that forum. The relevant observations in this regard, are as follows:



“16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the *dominus litis* and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration may not always be a sure criterion justifying transfer.”

21. The Hon’ble Supreme Court in case of ***Kulwinder Kaur v. Kandi Friends Education Trust***, (2008) 3 SCC 659 has held that although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. It was further held that an order of transfer must reflect application of mind by the Court. The relevant observations read as under:

“21. ...So far as the power of transfer is concerned, Section 24 of the Code empowers a High Court or a District Court to transfer inter alia any suit, appeal or other proceeding pending before it or in any Court subordinate to it to any other Court for trial and disposal. The said provision confers comprehensive power on the Court to transfer suits, appeals or other proceedings at any stage either on an application by any party or suo motu.

22. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

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 plaintiff or 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.

26. ...It is true that normally while making an order of transfer, the Court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action.”

22. This Court observes that the issues arising for consideration and adjudication in *CS No. 491/2019* may include determining whether the revocation of the license granted to the respondent herein *via* the license agreement dated 17.08.1995 was valid, and consequently, whether the respondent was liable to vacate the premises at Flat No. 16, DPS Staff Flats, F-block, East of Kailash, New Delhi-110065. The Court will also need to consider whether her failure to vacate the premises would make her liable to pay monthly rent to the School through deductions from her salary. It is noteworthy that this license was revoked by the School in 2019 while



the respondent was still employed as a teacher and living in the official accommodation provided by the School/ petitioner-Society.

23. In contrast, the issues in *CS No. 154/2024* will involve determining by what authority the respondent has continued to reside in the premises after her superannuation from the School in September 2021 since the license agreement stipulated that the license would be terminated upon the termination of the licensee's services with the School. Therefore, the Court will need to assess whether the respondent is liable to pay monthly rent for occupying the premises beyond her superannuation and whether she must vacate the premises.

24. In this Court's opinion, though there is a common property in question, where the respondent has been residing since the year 1995, the main cause of action for instituting the suit i.e. *CS No. 491/2019*, differs from the cause of action for instituting *CS No. 154/2024*. The reliefs claimed therein are also different and not entirely interdependent.

25. This Court further notes that one of the prayers, i.e., prayer (b) in *CS No. 491/2019*, is to restrain the defendants therein from deducting monthly rent from her salary. Prayer (c) in the same suit seeks a direction to the Directorate of Education and other defendants to return the amount deducted as rent from her salary. These prayers would only be relevant up until September 2021, i.e. before her superannuation, as the respondent has not received any salary from the School thereafter. Conversely, in *CS No. 154/2024*, the total monthly rent claimed by the petitioners herein has been calculated



from the period 01.10.2021 onwards, i.e. after the respondent was superannuated from the School.

26. Therefore, the suit filed by the respondent herein, in the year 2019, essentially revolves around the period when she had been employed with the School as a teacher and had been asked to vacate her official residential accommodation due to the termination of her license by the School, whereas the suit filed by the petitioners herein pertains to the current period, wherein the reliefs sought relate to the period when the respondent herein had already been superannuated from the School and the question is as to by what authority, she has continued to stay in the premises even after her superannuation.

27. This Court also notes the petitioners themselves have mentioned in Ground 'd' of the present petition that "*the suits are based on different cause of action and the reliefs claimed by the parties are substantially different*". Thus, it is the petitioners' own case that the reliefs claimed in both suits are substantially different from each other, arising from different causes of action.

28. Further, another important factor which weighs in this Court's mind is that CS No. 491/2019 has been pending before Patiala House Courts for more than five years and the proceedings in the said case have reached at the advanced stage of recording of plaintiff's evidence. On the other hand, CS No. 154/2024 has been filed by the petitioners herein only about five months back, and the proceedings in this case are at initial stages. In case of ***Indian Overseas Bank*** (*supra*), one of the considerations by the Hon'ble Supreme Court, while allowing the transfer of suits, was that both the suits were at



similar stage and recording of evidence had not yet begun. The relevant observations are as follows:

“21. ...Both the suits at Madras and Seoni are more or less at the same stage. Evidence has not yet commenced in either of the suits. The defendants in both the suits have filed their written statements...”

29. Thus, the respondent before this Court, who has been diligently pursuing her case for the last five years cannot now be compelled to go to another Court, albeit any other material consideration.

30. Therefore, for the reasons recorded in the above discussion, this Court does not find this case suitable for exercising jurisdiction under Section 24 of the CPC to transfer the suit.

31. Accordingly, the present petition is dismissed, alongwith pending application if any.

32. However, nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

33. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 30, 2024/zp