

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 2194 of 2025
Niranjan Khanra
Vs.
Sudripta Das & Anr.**

For the Petitioner	: Mr. Tanmoy Mukherjee, Mr. Sumitava Chakraborty, Ms. Bratati Pramanick, Mr. Shamit Sanyal, Ms. Sanchayita De advocates
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For the Opposite Party	: Mr. Sanjay Mukherjee Mr. Arghadip Das Mr. Chiranjit Pal ...advocates
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Heard on	: 28.07.2025
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Judgment on	: 24.10.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated May 17, 2025 passed by the learned District Judge at Alipore in Misc. Case no. 148 of 2025.

2. By the order impugned, the application under Section 24 of the Code of Civil Procedure being Misc. Case No. 148 of 2025 for transfer of Ejectment Suit no 47 of 2024 was rejected.
3. The opposite parties filed a suit for recovery of possession by way of eviction, damages and mesne profits against the petitioner before the learned Civil Judge, Senior Division 10th Court at Alipore which was registered as Ejectment Suit No. 47 of 2024. At the stage of cross examination of the plaintiff witness no. 1, the petitioner filed an application under Section 24 of the Code of Civil Procedure being Misc. Case no. 148 of 2025 before the learned District Judge, 24 Parganas (South) at Alipore praying for transfer of the Ejectment Suit pending before the learned Civil Judge, Senior Division, 10th Court at Alipore to any other learned Court at Alipore.
4. The case made out by the petitioner in the Misc. Case for transfer of the Ejectment Suit was that when the cross examination of PW 1 resumed on April 5, 2025 the learned Judge expressed an opinion against the petitioner on the merits of the defence case. It was further alleged that the Presiding Officer did not allow the counsel of the petitioner to cross examine the PW 1 in detail. It was further stated in the said application that the conduct of the Presiding Officer created an apprehension in the mind of the petitioner that the Presiding Officer has already made up his mind to decide the suit against the petitioner and that he will not get justice in the hands of the Presiding Officer. On such grounds the petitioner prayed for transfer of the eviction suit to any other court at Alipore having jurisdiction for a fair trial.
5. The said Misc. Case for transfer of the Ejectment Suit was contested by the opposite parties by filing a written objection denying the material allegations contained in the said application for transfer. It was specifically stated in the said written objection that the petitioner attempted to cross examine the PW 1 beyond the pleadings. It was further stated therein that in order to prolong their occupation in respect

of the suit property and for the purpose of delaying the eviction suit the petitioner was expanding the scope of the cross examination. It was specifically denied therein that the Presiding Officer made any statement in open Court touching upon the merits of the eviction suit. The opposite parties prayed for rejection of the prayer for transfer.

6. Mr. Tanmoy Mukherjee learned advocate appearing in support of the civil revision application contended that the petitioner has specifically stated on oath that the Presiding Officer has expressed an opinion against the petitioners touching upon the merits of the eviction suit. He further contended that a litigant has to be assured of a fair trial in the matter of dispensation of the justice. He further contended that the opinion expressed by the Presiding Officer at the time of cross examination of the PW 1 by the counsel of the petitioner gave rise to a legitimate apprehension in the mind of the petitioner that the Presiding Officer has already made up his mind to decide the suit against the petitioner and that he will not get justice from the Presiding Officer. Mr. Tanmoy Mukherjee further contended that the learned District Judge failed to appreciate the impact of the opinion expressed by the Presiding Officer in course of cross examination of the PW 1 while rejecting the prayer for transfer. Mr. Tanmoy Mukherjee further contended that the Presiding Officer before whom the Ejectment Suit is pending is not allowing the petitioner to cross examine the PW 1 effectively. He further contended that the Court should not interfere with the proper exercise of the right of cross examination and cross examination should not be stopped even if it may appear to be lengthy or may subsequently prove to be no value.
7. Mr. Sanjay Mukherjee learned advocate appearing for the opposite parties seriously disputed the submissions made by Mr. Tanmoy Mukherjee. He contended that the Counsel of the petitioner expanded the scope of cross examination of the PW 1 unnecessarily in order to prolong the eviction suit. He contended that the Court has the discretion

and control over the proceedings and should exercise the power in a reasonable way. He further submitted that if a witness is cross examined extensively on several dates, the Court has the power to direct cross examination to be completed within a reasonable time. In support of such contention he placed reliance upon a decision reported at **1955 ILR (Bom) 675** in the case of **Yeshpal Jashbhai Parikh (Original Accused) vs. Rasiklal Umedchand Parikh**. He further contended that the general power of transfer and withdrawal under Section 24 of the Code of Civil Procedure should not be exercised lightly as the plaintiff is the dominus litis and is entitled to institute his suit in any forum which the law allows him. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Indian Overseas Bank, Madras vs. Chemical Construction Company and Others** reported at **(1979) 4 SCC 358**. He further contended that the Court should not exercise the power for transfer merely on the basis of apprehension of a litigant and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Mrs. Maneka Sanjay Gandhi and Another vs. Miss Rani Jethmalani** reported at **(1979) 4 SCC 167**. Mr. Sanjay Mukherjee also placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Gujarat Electricity Board and Another vs. Atmaram Sungomal Poshani** reported at **(1989) 2 SCC 602** in support of his contention that a litigant has no right to get a case transferred to any other court merely because an expression on the merits of the case has been expressed by the learned Presiding Officer.

8. Heard the learned advocates for the parties and perused the materials placed.
9. The opposite parties herein filed a suit for recovery of possession against the petitioner. The petitioner is contesting the said suit by filing a written statement. The evidence of the PW 1 commenced on February 4, 2025. After the completion of the examination-in-chief the cross examination of

PW 1 commenced on 10.03.2025. The PW 1 was cross examined thereafter on 11.03.2025 and 13.03.2025. Thereafter, the cross examination resumed on 05.04.2025 and the next date for further cross examination was fixed on 07.04.2025.

10. In the application for transfer it has been alleged that when the cross examination of PW 1 was resumed on 05.04.2025, the learned Presiding Officer made an adverse remark on the merits of the case. It has been alleged in the said petition that the learned Presiding Officer made the following remark-

“What are you going to do with all this cross-examination? It’s no use. You will lose this case with the written-statement you have submitted.”

11. After going through the application for transfer, this Court finds that the petitioner sought to make out a case that the Presiding Officer is biased against the petitioner and is not allowing the petitioner to conduct the cross examination of PW 1 effectively.
12. At this stage it would be relevant to point out that the PW 1 works at the Institute of Bio-resources and Sustainable Development and resides in Imphal and has to come down to Alipore in order to face the cross examination. Record reveals that the cross examination continued for five days. It would not be out of place to mention that the learned Trial Judge by an order dated November 28, 2024 rejected the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the plaintiffs/opposite parties herein. Therefore, it cannot be said that the Presiding Officer is conducting the suit in a biased manner.
13. This Court is not inclined to accept the contention of Mr. Tanmoy Mukherjee that the Presiding Officer has not allowed the petitioner’s counsel to cross examine the PW 1 in detail as the record reveals that on several dates the counsel of the petitioner extensively cross examined the PW1.

14. Though the petitioner has alleged that the Presiding Officer expressed an adverse opinion against the petitioner touching upon the merits of the case while the petitioner's counsel was cross examining the PW 1, such fact has been disputed by the opposite parties in the written objection to the application for transfer. Even if for the sake of argument it is accepted that the Presiding Officer during course of cross examination of PW 1 by the petitioner's counsel made such observation, this Court is of the considered view that the Presiding Officer who is in seisin over the matter made such observation only for the purpose of exercising control over the proceedings in a reasonable way including completion of cross examination of a witness within a reasonable time frame. Such observation do not reflect that the Presiding Officer is biased in favour of the plaintiff.
15. In **Yashpal Jashbhai Parikh** (supra) it was held that the courts must be presumed to have the power and the authority to control the cross examination of a witness if the court is satisfied that the cross examination has been irrelevant or has been rambling and such power is in addition to the powers under the Indian Evidence Act.
16. In **Maneka Sanjay Gandhi** (supra) it has been held that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hyper sensitivity or relative convenience of a party or easy availability of legal aid services or like mini grievances. Something more substantial, more compelling, more imperilling from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer.
17. In **Gujarat Electricity Board** (supra) the Hon'ble Supreme Court 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. It was further held that mere apprehension in the mind of

a litigant that he will not get justice from the Presiding Officer cannot be the ground for transfer.

18. A judge does not have any personal interest in the outcome of the controversy between the parties to a suit or proceeding. The court while considering the prayer for transfer has to see whether the apprehension that the litigant will not get justice in a particular case is reasonable or not.
19. By applying the well settled proposition of law laid down by the Hon'ble Supreme Court and High Courts, this Court holds that the observations made by the learned Presiding Officer (supra) is only to control the proceedings in a reasonable manner and to ensure that the cross-examination of PW 1 is completed expeditiously . Record reveals that the Presiding Officer passed orders against the plaintiff / opposite party. This Court is not inclined to accept the allegation of bias levelled against the Presiding Officer by the petitioner. Mere apprehension in the mind of the petitioner that he will not get justice from the Presiding Officer forms the basis of the application for transfer. It is well settled that a suit cannot be transferred from one court to another merely on the basis of apprehension in the mind of the litigant.
20. To the mind of this Court petitioner failed to make out a substantial and compelling ground for transfer of the instant suit.
21. The learned District Judge after considering the materials on record applied the well settled proposition of law laid down by the Hon'ble Supreme Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar and Others** reported at **(2011) 14 SCC 770** and **Gurcharan Dass Chadha v. State of Rajasthan** reported at **(1965) SCC Online SC 341** and was right in holding that the learned Presiding Officer was neither biased nor incompetent to decide the matter in accordance with law.

22. In **Indian Overseas Bank** (supra) it was held that when common questions of facts and law between parties common to both the suits are pending in two different courts, it is generally in the interest of justice to transfer one of those suits to the other forum to be tried by the same court in order to avoid multiplicity in the trial of the same issues and the risk of conflicting decisions thereon. The said decision being distinguishable on facts cannot be applied to the case on hand.
23. For all the reasons as aforesaid this Court holds that the learned District Judge was right in rejecting the prayer for transfer of the suit.
24. CO No. 2194 of 2025 stands disposed of with the hope and trust that the learned Trial Judge shall make an endeavour to dispose of the suit as expeditiously as possible without being influenced by any of the observations made by the learned District Judge in the impugned order as well as by this Court in this order. There shall be, however, no order as to costs.
25. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)