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

+ **TR.P.(C.) 149/2024, CM APPL. 49444/2024**

SUDIPTA BASU

.....Petitioner

Through: Ms. Gita Dhingra, Adv. with
petitioner (VC)

versus

RUPA BASU

.....Respondent

Through: Ms. Seema Seth, Mr. Satish Panchal,
Ms. Muskan Deswal, Ms. Poorvi Jain,
Mr. Sanjiv Saluja, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

30.01.2025

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1. The present Transfer Petition has been filed under Section 24 of the Code of Civil Procedure by the petitioner seeking transfer of the divorce petition bearing no. HMA/848/2021 pending in the Court of Ld. Judge, Family Court, Patiala House Courts, New Delhi to any other Court of Competent Jurisdiction, preferably in West District, Dwarka Courts, New Delhi or South West District, Saket Courts.
2. The petitioner seeks transfer of the proceedings primarily on the following grounds:
 - a. Certain observations made by the Ld Family Court Judge during the proceedings have given rise to a reasonable apprehension in the mind of the petitioner to prejudice his defence in the divorce petition;



- b. When the petitioner expressed his desire to conduct cross-examination as party-in-person, the Ld. Family Judge passed an order dated 04.06.2024 declining such permission, which the petitioner perceives as prejudicial to his right of defence;
 - c. Certain judicial observations and directions in the order dated 04.06.2024 have created circumstances that give rise to a reasonable apprehension regarding the fair adjudication of the matter; and
 - d. The cumulative effect of the aforementioned circumstances has created a condition where the petitioner has a genuine and reasonable apprehension of not getting justice.
3. Before deciding on the present petition, it is important to note that the counsels should be aware that they are also the court officers and have a primary responsibility to exercise the highest care and caution when drafting and making accusations in the transfer petition against the judge in question, especially when making outrageous accusations against the presiding judge. The irrational and erroneous accusation as justifications for transfer of case has to be discouraged as it may impact fair and impartial trial. Though in the extreme case, if the facts warrants so, the Court can exercise the jurisdiction to transfer the case from one Court to another but it must be done in an exceptional case.
4. In order to invoke transfer jurisdiction under Section 24 of the Code of Civil Procedure, 1908, based on claims of prejudice against the Presiding Officer, the Court must be convinced that the apprehension is legitimate and reasonable. It is the petitioner's responsibility to demonstrate that the stated fear of bias or prejudice is justified by



believable circumstances and relevant proof. An allegation of apprehension without supporting evidence is insufficient to support the transfer of proceedings.

5. The authority to transfer cases must be used carefully and only in extraordinary situations where there are strong arguments in favour of the transfer. Reliance is placed upon **Rajkot Cancer Society vs. Municipal Corporation, Rajkot**¹ wherein it was *inter-alia* held as under:

“4. It must be stated that neither of the possible grounds urged by Mr. Tanna is convincing. There is absolutely no reason whatsoever for transferring the case from one Court to another. It must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another has to be exercised with due care and caution bearing in mind that there should be no unnecessary, improper or unjustifiable stigma or slur on the Court from which the case is transferred.....”

(Emphasis Supplied)

6. In **Pasupala Fakruddin and Anr. vs. Jamila Mosque and Anr.**² it was *inter-alia* held as under:

¹ 1987 SCC OnLine Guj 29

² 2003 SCC OnLine AP 547



“10. The High Court has every power to transfer the matters pending in any tribunal or Court by exercising the powers under Section 24 C.P.C., either suo motu or at the request of either of the parties. When it is at the request of either of the parties, the High Court may transfer the matter only when there is sufficient material to show that the party is not likely to get justice before the Presiding Officer of a particular Court and it is essential in the interest of justice to transfer the matter to any other Court.

12. I have already observed in the foregoing discussion that the petitioners did not make out any case to prove their contention that there is every likelihood of bias to the Presiding Officer due to his acquaintance with the parties and their counsel. Unless there are specific instances of bias, unless the Presiding Officer has personal interest in the subject matter of the suits, he cannot be branded as a biased Officer. This would demoralize the Officers in the eye of the public and it becomes very difficult for such officers to work in a free and unbiased atmosphere. The mere apprehension of the petitioners on imaginary grounds cannot be accepted.”

7. In Nandini Chatterjee vs. Arup Hafi Chatterjee³ it was inter-alia held as under:

“5. The basic principle governing the granting of a petition under S. 24 of the C.P.C. which should be borne in mind that the petition like this is not to be dealt with in a light-hearted manner and transfer of a case from one Court to another should not be granted readily for any fancied notion of the petitioning litigant because of the reason that such transfer of a case from one Judge to another in effect casts doubt on the integrity competence and reputation of the concerned Judge. Unless and until a sufficiently cogent ground is disclosed transfer should not be allowed as a matter of course. The Court from which the case is sought to be transferred must be shown to have disclosed a definitely unfair attitude or biased frame of mind against the petitioner and the

³ 2000 SCC OnLine Cal 414



petitioner must have some reasonable grounds for apprehending that he or she may not get justice from that Presiding Officer if the trial of the case is.”

8. The recurring theme in these precedents is that the bar for approving a transfer must be based on significant justifications rather than merely hypothetical concerns. In the present case, the grounds on which the transfer is sought in the present petition are outrageous and erroneous accusations, and the petitioner has failed to demonstrate that the stated fear of bias or prejudice is justified by believable circumstances and relevant proof. Hence, the present petition is dismissed with a cost of Rs.10,000/- imposed upon the petitioner to be deposited within six weeks with the ‘*Armed Forces Battle Casualties Welfare Fund*’.

DINESH KUMAR SHARMA, J

JANUARY 30, 2025/AR/HT