

(1934) 02 AHC CK 0017**Allahabad High Court****Case No:** None

Narain Das Gopal Das

APPELLANT

Vs

(Firm) Khunni Lal Lachmi Narain

RESPONDENT

Date of Decision: Feb. 21, 1934**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 22, 24

Citation: AIR 1934 All 569 : 150 Ind. Cas. 942**Hon'ble Judges:** Iqbal Ahmad, J**Bench:** Division Bench**Final Decision:** Disposed Of**Judgement**

@JUDGMENTTAG-ORDER

Iqbal Ahmad, J.

This is an application for the transfer of suit No. 570 of 1933 from the Court of the Munsif of Bareilly to the Court of the Munsif of Agra. The applicant) firm Narain Das Gopal Das carries on the business of commission agent at Agra and the opposite-party, Khunni Lal Lachmi Narain, is a firm carrying on business at Bareilly. The applicant, on instructions received from the opposite-party entered into certain transactions of purchase and sale of yarn, and suit No. 570 has been filed by the opposite-party against the applicant for rendition of accounts and for certain other reliefs. In the plaint the opposite party alleged that the contract for the purchase and sale of yarn between the parties was entered into at Bareilly, and it was agreed between the parties that the accounting would be done at Bareilly and, accordingly, the Munsif of Bareilly had jurisdiction to entertain the suit. These allegations were denied by the applicant in the writ-ton statement filed by it, and a plea was raised that the Munsif of Bareilly had no jurisdiction to entertain the suit. The applicant also filed a suit against the opposite-party (suit No. 626 of 1933) in the Court of the Munsif of Agra, for recovery of a sum of Rs. 4,230, on account of alleged losses

incurred by the applicant in the forward contracts of the purchase and sale of yarn entered into by the applicant on behalf of the opposite party.

2. It is alleged in the affidavit filed in support of the application for the transfer of suit No. 570 that the forward contracts on behalf of the opposite-party were entered in Agra, and the goods were ultimately sold at Agra, and that all the witnesses who would be examined in the case are residents of Agra. The allegation that the transactions forming the subject of enquiry in both the suits took place at Agra is not denied and, I have no reason to doubt the fact that most of the witnesses to be examined in both the suits would be witnesses residing in Agra. The defendant undoubtedly is the accounting party, and it cannot be denied that it would be convenient to have the accounts settled at the place where all the business was transacted. On the ground of balance of convenience, therefore, I have no doubt that the Agra Court is the proper Court to try both the suits. Further, in order to avoid conflicting decisions it is desirable to have both the suits tried by one and the same Court. On the merits, therefore, I have no hesitation in holding the application ought to succeed and that suit No. 570 should be transferred from the Court of the Munsif of Bareilly to the Court of the Munsif of Agra to be tried along with suit No. 626 pending in the latter Court.

3. But it is argued by the learned Counsel for the opposite-party that I have no jurisdiction to transfer suit No. 570 from the Court of the city Munsif of Bareilly to the Agra Court. His contention is that an order for transfer of a suit u/s 24 of the CPC can be made only when the suit sought to be, transferred has been instituted in a Court having jurisdiction to try the same, and he argues that as, according to the contention of the defendant embodied in the written statement filed in suit No. 570, Bareilly Court has no jurisdiction to entertain that suit, an order transferring that suit, in exercise of the powers, vested in this Court by Section 24 C.P.C. cannot be passed. In support of this contention reliance has been placed by the learned Counsel on the decisions in Purna Chandra v. Dhone Kristo AIR 1914 All. 351, Askaran Baid v. Bhola Nath AIR 1918 Oudh. 441, Ram Kumar Sheo Chand Rai v. Tula Ram Nathu Ram AIR 1923 Pat. 138, Pachaoni Awasthi v. Ilahi Baksh (1882) 4 All. 478, Ledgard v. Bull (1887) 9 All. 191, Bibi Sairah v. Mt. Golab Kuar AIR 1919 Pat. 345 and Amir Chand v. Buti Shah AIR 1930 Lah. 195. The first three cases referred to above have absolutely no application to the case before me. In those cases it was held that a defendant in a suit who takes objection to the jurisdiction of the Court in which the suit has been instituted, cannot make an application for its transfer to another Court u/s 22 Civil P.C. The application before me is u/s 24 and not u/s 22 Civil P.C. It is provided by Section 22 Civil P.C. that where a suit may be instituted in any one of two or more Courts, and is instituted in one of such Courts, the defendants may apply to have the suit transferred to another Court, and the Court to which such application is made is to determine, after hearing the parties, in which of the several Courts having jurisdiction the suit shall proceed. It is obvious, therefore, that Section 22 has application only to those cases in which more than one Court is competent to

entertain the suit sought to be transferred, and the suit has been instituted in one of such Courts. Accordingly it was held in the three cases referred to above that a defendant cannot raise an issue as to the jurisdiction of the Court in which the suit is pending and, at the same time apply for transfer of the case u/s 22, which contemplates that the suit may be properly instituted in the Court in which it is pending as well as in some other Courts. But the power of transfer vested in the High Court or the District Court by Section 24 Civil P.C. is untrammelled by any such conditions. Section 24 is general in its terms, and the power of transfer and withdrawal defined by that section can be exercised even with respect to suits which can be entertained by one Court alone.

4. All that is necessary to bring into play the jurisdiction of the High Court or the District Court to exercise the power of transfer and withdrawal given u/s 24 is that the suit, appeal or other proceeding sought to be transferred should be "pending before it" or "pending in any Court subordinate to it". The mere fact, that the suit, appeal or other proceeding is pending in a Court not having jurisdiction to dispose of the same, cannot oust the jurisdiction of the High Court or the District Court to withdraw or transfer that suit, appeal or other proceeding from the Court in which it is pending to some other Court competent to try the same. If the legislature had intended that Section 24 should be confined in its operation only to cases pending in Courts having jurisdiction, nothing would have been easier than to use the words "pending in a Court of competent jurisdiction" in Section 24 words which are not there. In construing Section 24 I must give effect to the words used in that section according to their plain meaning and it appears to me, that to uphold the contention of the learned Counsel for the opposite party would be to introduce in Section 24 certain words limiting the scope of that section, for which I can discover no justification. It is however argued by the learned Counsel for the opposite-party that the decisions relied upon by him support his contention and I now proceed to examine the remaining decisions referred to by him. In *Pachaoni Awasthi v. Ilahi Baksh* (1882) 4 All. 478 a District Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted and consequently the Court to which it was transferred directed the plaint to be returned for presentation to the proper Court. The plaintiff appealed to the District Judge who held that, as the suit had been transferred to a Court competent to try the same, the defect in the initial institution of the suit was cured. The District Judge accordingly remanded the case to the Court to which it had been transferred for trial on the merits. This Court in revision held that the defect of jurisdiction arising out of the institution of the suit in the wrong Court was not cured by the transfer of the suit to a Court competent to try the same. This decision again does not touch the point before me. The question that arose for determination in the case was not whether the District Court had the power to transfer the suit which was instituted in a Court not having jurisdiction to entertain the same, but the question was whether

the transfer to a competent Court had the effect of curing the initial defect in the institution of the suit in a Court that was not competent to try the same. The question in what cases the High Court or the District Court has power u/s 24, to transfer a case did not arise for determination in that case, and this question must not be confused with the question as to what is the effect of an order of transfer, when the case that is transferred has not been instituted in a Court of competent jurisdiction.

5. Similarly in *Ledgard v. Bull* (1887) 9 All. 191 the question for consideration by their Lordships of the Privy Council was as to the effect of an order transferring the suit from a Court in which it was instituted, and which admittedly had no jurisdiction to try the same, to a Court having jurisdiction to entertain the suit. In that case their Lordships approved of the decision of the Calcutta High Court in *Peary Lall Mozumdar v. Komal Kishore* (1881) 6 Cal. 30 in which the Calcutta High Court refused to exercise the power of transfer with respect to an appeal which was inadvertently filed in a wrong Court and left the appellant "to take necessary steps to place his appeal in the" Court in which the appeal ought to have been filed. The learned Judges observed in that case that they could, u/s 25 Civil P.C. (Act 14 of 1882), direct the transfer of an appeal only from a Court having jurisdiction to receive and try it. These words must be read in the context in which they occur. As the appeal sought to be transferred had not been instituted in the right Court, the learned Judges left it to the appellant to take his appeal to the right Court, and did not exercise the power of transfer vested in the Court by Section 25 Civil P.C. When it is admitted that a suit or an appeal has been filed in a wrong Court, the District Court or the High Court would obviously be reluctant to transfer the same, for the simple reason that the order of transfer cannot cure the initial defect in the institution of the suit or the appeal in a Court not competent to entertain the same. But it is quite another thing to say that when the objection to jurisdiction is not patent on the face of it, the power of transfer cannot be exercised. To hold so would be to unduly widen the scope of enquiry u/s 24, Civil P.C. and to make it imperative on the High Court or the District Court, before passing an order of transfer, to enter into the vexed and troublesome question of the jurisdiction of the Court in which the suit or appeal was instituted, and there is no warrant for such a course furnished by the wording of Section 25, Civil P.C. It is true that their Lordships of the Judicial Committee summarized the decision of the Calcutta High Court in the following words:

The superior Court cannot make an order of transfer of a case u/s 25, Civil P.C., unless the Court from which the transfer is sought to be made has jurisdiction to try it.

6. But these observations must be read in the light of the facts of the case decided by the Calcutta High Court and, in my judgment, their Lordships did not lay it down as a general proposition that the power of withdrawal and transfer given by Section

24 Civil P.C. (Act 5 of 1908), (which corresponds to Section 25 of Act 14 of 1882), can only be exercised if the suit, appeal or other proceeding has been instituted and is pending in a Court that has jurisdiction over the same. Similarly, in Bibi Sairah v. Mt. Golab Kuar the question for consideration was as to the effect of an order transferring an appeal from a Court which had no jurisdiction to hear the same to a Court in which the appeal ought to have been filed, but was originally not filed. In Amir Chand v. Buti Shah AIR 1930 Lah. 195, certain suits were instituted in a Court that had no jurisdiction to try those suits and the defendants to the suits raised the question of jurisdiction. The Court did not decide the question and the suits were referred: to arbitration and awards were made by the arbitrators. The Court then found that it had no jurisdiction to try the suits, and sent the suits to the District Judge for transfer to a Court having jurisdiction. The District Judge transferred the suits to a Court having jurisdiction, and that Court passed an order to the effect that the proceedings held in the original Court and the awards delivered by the arbitrators were valid. The defendants then challenged the validity of the order of the Court, to which the suits were transferred, by applications in revision in the High Court and the High Court held : (a) that the original Court should have returned the plaint to the plaintiff for presentation to the proper Court; (b) that the District Judge had no jurisdiction to transfer the suits; and (c) that the order passed by the Court to which the suits were transferred was illegal. In this case again the cardinal question for decision was as to the effect of the order of transfer passed by the District Judge, and the question whether the District Judge had or had not jurisdiction to transfer the suits was absolutely unnecessary for the decision of the case. But if the learned Judge intended to hold that the order passed u/s 24 transferring a suit or an appeal or other proceeding that; had not been filed in a Court having jurisdiction to try the same is bad in law, I, for the reasons given above, respectfully dissent from that decision.

7. In the case before me the applicant has no doubt challenged the jurisdiction of the Court of the Munsif of Bareilly to try the suit sought to be transferred from that Court, but the determination of the question of jurisdiction depends on the decision of the question whether or not the allegations contained in the plaint, that the contract between the parties was entered into at Bareilly and it was agreed that accounts will be rendered at Bareilly, are true. The Agra Court has admittedly jurisdiction to try the suit filed in Bareilly as the defendant (the applicant before me) resides in Agra and by transferring the suit to Agra, the question of jurisdiction would beset at rest, and all the evidence on that point would become superfluous. This fact has also weighed with me in arriving at the decision at which I have arrived, viz. that the suit must be transferred to Agra, The result is that I allow this application and transfer suit No. 570 of 1933 from the Court of the Munsif of Bareilly to the Court of the Munsif of Agra and direct that the same be tried along with suit No. 626 of 1933 pending in the Court of the Munsif of Agra. I make no order as to the costs of this application. N.B. Mr. Pathak asks for leave to appeal under the

Letters Patent. The question whether an appeal under the Letters Patent lies is a debatable one and I refrain from expressing an opinion on that point. Leave to appeal under the Letters Patent is granted.