

## Kanyal Das and Others Vs Har Prasad and Others

**Court:** Allahabad High Court

**Date of Decision:** Nov. 24, 1971

**Acts Referred:** Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€” Section 21, 21(1A)  
Civil Procedure Code, 1908 (CPC) â€” Section 24(1)

**Citation:** AIR 1972 All 249 : (1972) 42 AWR 5

**Hon'ble Judges:** T.S. Misra, J; Satish Chandra, J; S.N. Dwivedi, J

**Bench:** Full Bench

**Advocate:** K.C. Agarwal, for the Appellant;

**Final Decision:** Disposed Of

### Judgement

Satish Chandra, J.

In this and the connected applications, the applicants prayed that the first appeal pending in the Court of the District

Judge concerned may be withdrawn and disposed of by this Court u/s 24(1)(b). Civil P. C. At the hearing of these applications, a learned Single

Judge felt that there was a conflict between two Division Bench decisions. He referred the applications to a Full Bench.

2. The first appeals involved in these applications were instituted in the High Court and were pending disposal here. The U. P. Civil Laws

Amendment Act. 1970, came into force on 8th April, 1970. Section 4 amended Section 21 of the Bengal. Agra and Assam Civil Courts Act,

1887. It provided:

4. Amendment of Section 21 of Act XII of 1887.-- In Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887. as amended in its

application to Uttar Pradesh (hereinafter referred to as the Bengal, Agra and Assam Civil Courts Act), for Sub-section (1), the following sub-

sections shall be substituted. namely:--

(1) Save as aforesaid, an appeal from a decree or order of a Civil Judge shall lie-

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which, the decree or order was made,

whether instituted or commenced or decided before or after the commencement of the Uttar Pradesh Civil Laws Amendment Act. 1968

(President's Act XXXV of 1968), was less than twenty thousand rupees and

(b) to the High Court in any other case.

(1-A) An appeal from a decree or order of a Civil Judge where the value of the original suit in which, or in any proceeding arising out of which, the

decree or order was made exceeded ten thousand rupees but was less than twenty thousand rupees instituted in the High Court before the date of

commencement of the Uttar Pradesh Civil Laws Amendment Act, 1970. and pending in the High Court immediately before the said date, not being

an appeal in which arguments have been concluded before the said date and only judgment disposing of the appeal remains to be pronounced,

shall stand transferred to the District Judge having jurisdiction who may either decide it himself or assign it to any Additional Judge subordinate to

him.

(1-B) The period of limitation prescribed for filing an appeal from a decree or order of a Civil Judge where the value of the original suit in which, or

in any proceeding arising out of which, the decree or order was made exceeded ten thousand rupees but was less than twenty thousand rupees and

the decree or order was made before December 2, 1968, shall, notwithstanding anything in the Limitation Act, 1963 (Act XXXVI of 1963) be

deemed to be and always to have been the same as if the appeal continued to lie to the High Court.

3. The effect of the Amending Act was that henceforth appeals of valuation of less than twenty thousand rupees lay to the District Judge. By Sub-

section (1-A) all appeals pending in the High Court, of the valuation between Rs. 10,000/- and Rs. 20,000/- stood transferred to the District

Judge concerned. The only exception engrafted to this wholesale transfer was for appeals in which arguments had been concluded before the date

the Amending Act came into force, namely before 8th April, 1970, and only the judgment disposing of the appeal remained to be pronounced.

4. Section 24(1). CPC confers power of transfer and withdrawal on the High Court as well as the District Court. Under Sub-clause (a) the High

Court or the District Court can transfer any suit, appeal or other proceeding pending before it to any Court subordinate to it for trial or disposal;

whereas, under Clause (b). the High Court or the District Court can withdraw any suit, appeal or other proceeding pending disposal in any Court

subordinate to it and try or dispose of the same itself, or transfer the same to any subordinate Court for trial or disposal.

5. It will be seen that under Sub-clause (a) of Section 24(1) the High Court has the discretionary power to transfer an individual suit, appeal or

other proceeding to a subordinate Court. Sub-section (1-A). of Section 4 of the U. P. Civil Laws Amendment Act, 1970. however, makes a

statutory transfer of the category of cases mentioned in it, namely those appeals pending in the High Court which were valued between ten

thousand and twenty thousand rupees. Sub-section (1-A) confers no discretion on the High Court. All such cases are directed to be transferred to

the District Judge concerned.

6. Though Sub-section (1-A) of the Amending Act entrenches upon the discretion conferred on the High Court to transfer an individual case, in the

sense that it takes away the discretion in regard to the category of cases mentioned in it, yet, in our opinion, Sub-section (1-A) does not in law

impinge upon the operation of Clause (b) of Section 24(1), Civil Procedure Code. Technically, the power of withdrawal vested in the High Court

under Clause (b) does not stand repealed by Sub-section (1-A) of the Amending Act (sic). The High Court can on appropriate grounds withdraw

an individual appeal for trial or disposal by itself, even though that appeal may have stood transferred from the High Court to the District Judge

under Sub-section (1-A). In that sense, the power of withdrawal under Sub-clause (b) still continues to vest in the High Court.

7. It is trite that the discretionary power to withdraw or transfer a case has to be exercised in accordance with law. It was urged on behalf of the

applicants that the convenience of the parties is a relevant and material consideration for deciding upon transfer or withdrawal of an appeal.

Elaborating this aspect, learned counsel urged that in the cases before us the paper books of the appeals were completely prepared in this Court.

Both the parties had engaged counsel and had instructed them fully. If these appeals are not transferred back to the High Court, the litigants will

have to engage counsel in the District Courts and incur expenditure all over again. Both parties in each appeal would be adversely affected; and

that in all these cases both parties are desirous that the appeals be heard and disposed of in this Court on ground of convenience.

8. While enacting Sub-section (1-A) of the Amending Act. the Legislature can be presumed to have known the realities of the situation, in regard

to the categories of the appeals covered by this sub-section. The Legislature can be deemed aware that in these appeals either one or both the

parties may have engaged counsel in this Court and that the matter of preparation of paper book must be in varying degrees of completion; and in

some cases the paper books may have been prepared and the cases may be ripe for hearing. But in spite of all these factors, it provided for a

wholesale transfer to the Court of District Judge. Obviously, the Legislature did not intend that this class of appeals be heard or disposed of by the

High Court.

9. While considering the question of convenience of the parties so as to merit withdrawal of the appeal to this Court, this Court is entitled and liable

to take into consideration the legislative, will incorporated in Sub-section (1-A) of the Amending Act. and to exercise its discretion in a manner so

as not to subvert or countermand the legislative mandate and upset the arrangement sought to be made by Sub-section (1-A).

10. In view of Sub-section (1-A), the High Court cannot retain this category of first appeals in order to try and dispose of them. What the High

Court cannot do directly, it should not do indirectly in the guise of exercising the discretionary power of withdrawal. Else, the exercise of the

discretion may become contrary to law, and so contrary to the essence of judicial adjudication, and may well be termed an arbitrary exercise of

power.

11. In our opinion the fact that the paper book was ready or that counsel in this court were fully instructed by the parties, that the parties were

desirous for a hearing in this Court, would by themselves be not sufficient to merit withdrawal of the appeal back to this Court. The observations of

a Bench of this Court to this effect in Seesh Ram v. Ajab Singh (Civil Misc. Transfer Appln. No. 219 of 1970 decided on 24-2-1971, (All)) were

appropriate and justified.

12. The decision of another Bench in Smt. Pushpa Devi Jain v. D. A. V. Junior High School. (Misc. Transfer Appln. No. 216 of 1970 decided on

10-2-1971 (All)) does not lay down any contrary proposition. In that case the first appeal had been argued on 7th, 8th and 9th April, 1970, in

ignorance of the coming into force of the Amending Act of 1970, on 8th April 1970. The Court dictated the judgment in Court on 9th and 10th

April, 1970. Thereafter the coming into force of the Amending Act was brought to the notice of the learned Judge. Since the arguments had not

concluded on 8th April, 1970. the learned Judge held that the appeal stood transferred to the District Judge. In view of these compelling facts, the

Bench held that the case was a fit one for withdrawal. It observed that this Court had heard the appeal and had dictated the judgment. Nothing

remained to be done except to pronounce it. In this context it was further observed that if the appeal is allowed to remain in the Court of the

District Judge, Meerut, both the parties will have to incur fresh expenditure in order to get the appeal argued, which is neither desirable nor

feasible; the balance of convenience lay in the appeal being disposed of by this Court. It is clear that the incurrence of additional expenditure was

not the prevailing circumstance. The fact that this Court had already heard the appeal and dictated the judgment, was the dominant consideration in

favour of the withdrawal of the appeal.

13. We can visualize cases in which in spite of the transfer under Sub-section (1-A) this Court may well withdraw an appeal. Take a case where

cross appeals are filed; one appeal being below Rs. 20,000/- in value while the other above it. Under Sub-section (1-A) the appeal valued at

below Rs. 20,000/- would stand transferred to the District Judge, while the other appeal will remain pending in this Court. On an application for

withdrawal, this Court may take the view that it will be in the interest of justice that both the appeals arising out of the same suit be heard at one

place and on that ground may withdraw the appeal which stood transferred to the District Judge,

14. Since we have heard learned counsel only on the general question which is common to all these applications, we refrain from going into the

merits of individual cases. They will be disposed of by the learned single Judge in accordance with law and in the light of the observations made

above.

15. Let the cases be laid before the learned single Judge with this opinion and answer.