

(1987) 12 CAL CK 0020

Calcutta High Court

Case No: None

In Re: Abdul Malik

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 24, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24, 24(1), 24(8), 3

Citation: 92 CWN 837

Hon'ble Judges: Susanta Chatterjee, J

Bench: Single Bench

Advocate: P. K. Mukherjee, Mr. Anil Kumar Chatterjee, for the Appellant; Arun Prokash Chatterjee, Mrs. Ajeya Mitra, for the Respondent

Judgement

S. Chatterjee, J.

A short but an interesting point has arisen in the instant case. The opposite party has filed a Title Suit No. 520 of 1985 now pending before the 13th Bench of the City Civil Court at Calcutta against the present petitioners/defendants for dissolution of the partnership firm "some other company" and for declaration that the Second Deed of Partnership dated 15-1-79 is void illegal and not binding upon the plaintiff and for accounts and other reliefs as stated in the plaint. By an order, dated 24-8-87 the Learned Judge, 13th Bench, City Civil Court at Calcutta decided the preliminary issue as to the valuation and maintenance of the suit in the affirmative, and feeling aggrieved the defendants moved a revision application in the Hon'ble High Court and by order, dated 18th September, 1987 S. K. Mukherji, J. directed both parties to exchange affidavits and the matter would appear in the list as "contested application" after long vacation of the Court. In the Trial Court, the plaintiff also filed an application for the appointment of Receiver and the date was fixed for hearing on 20-11-87, an application was filed on behalf of the defendants to the effect that till the jurisdiction point is decided the hearing of the application for the appointment of Receiver may be adjourned. Thereafter for various grievances the

petitioners/defendants filed an application on 4th of December, 1987 in the Court of the Learned Chief Judge, City Civil Court at Calcutta for transfer of Title Suit No. 520 of 1983 and Misc. Case No. 343 of 1987 arising out of the said suit pending before the Learned Judge 13th Bench to some other Court having jurisdiction to try the same. The Learned Chief Judge City Civil Court at Calcutta by order No. 5, dated 10.2.87 dismissed the Misc. Case No. 1174 of 1987 holding inter alia that the application for transfer filed by the defendants making allegations against the Court concerned where the suit is pending has no jurisdiction to entertain the same. The grounds upon which the petitioners sought to transfer the suit do not fall within, the scope of either Section 10 or Section 11 of the City Civil Court Act and as such the Chief Judge, City Civil Court could not enter into a question whether the apprehension of the petitioners is reasonable or not.

2. Being aggrieved the petitioners/defendants have immediately come to this Court challenging the impugned order in revision. The only point has arisen as to the scope of Sections 10 and 11 of the City Civil Court Act. It has to be seen as to whether the Chief Judge, City Civil Court at Calcutta has the power to transfer a suit from one Court to another on the ground where a party apprehends that he will not obtain fair justice before a particular Court. The Learned Court below having discussed the scope of Sections 10 and 11 of the City Civil Court Act found that sub-section (1) of Section 10 of the City Civil Court Act empowers the Chief Judge to make such arrangements as he thinks fit for the distribution of business of the City Civil Court amongst the Judges thereof. Accordingly, it was found that sub-section (2) of Section 10 of the City Civil Court Act empowers the Chief Judge to withdraw a suit from one Bench and transfer it to another Bench either for reasons specified in Section 11 of the Act or where the Chief Judge is of the opinion that it is necessary so to do to ensure proper distribution of business. The grounds of reasonable apprehension of a party of not obtaining fair justice does not come within the scope of Sections 10 and 11 of the City Civil Court Act and as such the Learned Chief Judge found that the application filed by the defendants on that score is not maintainable.

3. Naturally this Court has to examine the entire scope of Sections 10 and 11 of the City Civil Court Act along with comparative study of Section 24 of the Civil Procedure Code. For better appreciation both Sections 10 and 11 of the City Civil Court at Calcutta are set down below: -

Sec. 10: Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Sec. 11: Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided the Chief Judge, if he is one of the Judges so differing, or in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

4. It is argued on behalf of the petitioners that applying the test laid down by Maxwell on interpretation of statute one will have to make harmonious interpretation of provision of Sections 10 and 11 of the City Civil Court Act and drawing an analogy by looking to Section 24 of the CPC there will be one conclusion that the grounds as set out in the application for transfer come within the purview of the aforesaid provisions. Much emphasis has been laid down to Section 10(2) (a) and (b) of the said Act. It has pointed out that Section 10 is not merely a provision to enable the Chief Judge to exercise his administrative jurisdiction. Sections 10 and 11 of the City Civil Court Act confer jurisdiction upon the Court concerned to exercise judicial function. Such a jurisdiction can be exercised sue motu or upon an application of any of the parties. Section 10(2) (a) is clear enough to enable the Chief Judge to transfer any suit or proceeding pending before him for trial or disposal to any other Judge of the City Civil Court. Section 10(2) (b) enables the Chief Judge to withdraw any suit or proceeding pending before any other Judge of that Court, and (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Judge other than the Judge from whom, it was withdrawn. It is further pointed out that Section 24 of the CPC has also indicated general power of transfer and withdrawal and the same language has been used for withdrawal of any suit, appeal or proceeding and transfer of the same for trial or disposal. For better appreciation Section 24 of the CPC is also set out hereinbelow : -

Section 24: 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 a 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 to 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) re-transfer the same for trial or disposal to the court from which it was withdrawn.

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 re-try it or proceed from the point at, which it was transferred or withdrawn.

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.

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.

A suit or proceeding may be transferred under this Section from a Court which has no jurisdiction to try it.

6. According to the Learned lawyers for the petitioners the reasons given or assigned by the Learned Court below in holding about nonmaintainability of suit are not justified. The application for transfer ought to have been considered on merit.

7. Mr. Arun Prokash Chatterjee; the Learned Advocate appearing for the opposite party has made two-fold submissions. First he has argued that Section 24 of the CPC there is mention of transfer of a suit or any proceeding to any Court subordinate to it and competent to try is absent in Section 10 of City Civil Court Act. In the City Civil Court Act there is no Subordinate Court to the Chief Judge of the said Court. All are of equal ranks. The Chief Judge cannot transfer anything to his Subordinate Court. Secondly, he has argued that only for administrative purpose and to avoid deadlock to the Court's business in the absence of a presiding officer the cases can be transferred. The Learned Advocate for the opposite party has argued that there cannot be any judicial function to exercise jurisdiction to consider any allegations against a Judge or to consider the reasonable apprehension of a party to withdraw any case and/or transfer the same. The application for transfer on the grounds as set out cannot be considered by the Learned Chief Judge, City Civil Court and he had fully supported the impugned order.

8. Having heard the learned lawyers of the respective parties and looking to the provisions of Sections 10 and 11 of the City Civil Court Act and Section 24 of the CPC let us see as to what is the general power of transfer and withdrawal as envisaged in Section 3 of the Code of Civil Procedure. It is clear from Section 24 of the CPC that 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 much notice the High Court or the District Court at any stage -

(a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to trial or dispose of the same, or

(b) withdraw any suit appeal or other proceedings pendencies in any Court subordinate to it and (i) try and dispose of the same or (ii) transfer the same for trial or dispose of any Court subordinate to it and competent to try or dispose of the same; or (iii) re-transfer the same for trial or disposal of the Court from which it was

withdrawn. In Section 24(8) it has been explained that (a) Courts of Additional and Assistant Judges shall be deemed to subordinate to District Court, (b) "proceeding" includes a proceeding for execution of the decree or order.

9. The procedure of the City Civil Court has been laid down in Section 6 of the City Civil Court Act. It is provided therein that save as otherwise provided in this Act; the CPC shall apply to all suits and proceedings under the Act; so far as it is consistent with this Act. It is also provided in Section 7 of the said Act that all questions, other than questions relating to procedure or practice, which arise in suits or proceedings before the City Civil Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its Ordinary Original Civil Jurisdiction. In view of such provisions Sections 10 and 11 of the City Civil Court Act have their own importance. Section 10 of the City Civil Court Act clearly indicates the power of Chief Judge in respect of distribution of business and transfer and withdrawal of Suits or proceedings. As such, the distribution of business "transfer" and "withdrawal" of suits or proceedings are independent assignment. The Chief Judge may make such arrangement as he thinks fit for distribution of business of the City Civil Court amongst Judges thereof. It is no question of subordination. He is an administrative head having power to make arrangement as to the distribution of business. Such power is unambiguous. The Next comes sub-section (2) of Section 10. Here on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or if he is of opinion that it is necessary so to do in order to give effect to the provisions of Section 11 other than of its own motion and without such notice the Chief Judge may at any stage -

(a) transfer any suit or proceeding pending before him for trial or disposal, of any other Judge or of City Civil Court; or

(b) withdraw any suit or proceeding pending before any other Judge of that Court.

It does not mean that by sub-section (2) of Section 10 in which two aspects can be considered, one with regard to distribution of business as mentioned in sub-section (1) of Section 10 and the case as indicates u/s 11 of the said Act. Here in my view, the words "proper distribution of business" is much more comprehensive. The language of Section 10 is very wide and there are no restrictions or impediments in the way of the Chief Judge exercising the power of transfer merely because the word "distribution of business" is referred to in Section 10(2) of the Act.

10. The present case has nothing to do with Section 11 of the City Civil Court Act. The present problem does not relate to trial of any suit or proceeding in which a Judge is a party. Here the problem is that if a party reasonably apprehends that he will not obtain a fair justice will his application for transfer be considered within the scope of Section 10(2) of the City Civil Court Act.

11. Section 25 of the CPC of 1882 which corresponds to Section 24 of the present Civil Procedure Code, provided for the withdrawal of suits from Subordinate Courts and for transfer of the suits so withdrawn. The Division Bench of the Calcutta High Court had held in (1909) 36 Cal 193, (203) that Section was not exhaustive and the District Court had an inherent power to transfer a case itself to a Subordinate Court. The same view was assumed by the Madras High Court in (1885) 8, Mad, 500(502). The present Court now clearly confers this power in Section 24(1) Clause (a) as would be evident from another Division Bench of this Court reported in [Manindra Chandra Nandy Vs. Lalmohun Roy and Others](#), .

11(a). The right of a litigant to have a suit or application or other proceedings determined in the forum in which it has been commenced is a substantive one and does not belong to realm of procedure. But this right does not abrogate the power of the Court to transfer the suit or proceeding u/s 24 of the Code of Civil Procedure, Section 10 of the City Civil Court Act primarily deals with transfer on the judicial side, for instance, if a party complains that a particular Judge is interested in a particular suit and fair justice is not expected from such Judge he can apply for transfer and the Chief Judge after hearing the parties would pass an appropriate order within the scope of Sections 10 and 11 of the City Civil Court Act.

12. u/s 24 of the CPC a District Judge has the power to transfer a case before him to the Court of the Additional District Judge. Reference may be made to 13 IC 6. (O. "brain M.W. vs. Hazi Abdul Rahaman). The District Judge and Additional District Judge have the concurrent jurisdiction, There is no question of subordination. Similarly, it was found that in the [Ajit Kumar Bhunia Vs. Sm. Kanan Bala Deyi](#), that u/s 24 of the Civil Procedure Code, the District Judge can transfer only to a competent Court, such competency to be found otherwise and outside the Section. u/s 8(2) of the Bengal Agra Assam Civil Courts" Act, however the District Judge can transfer to an Additional Judge or an Additional District Judge and in the absence anything to the contrary, the Additional Judges" competency in that behalf can be assumed or presumed as it follows from the assignment itself. Similarly, u/s 10 of the City Civil Court Act it has to be seen whether the suit can be transferred to any other Judge who is competent to try the case. The emphasis is upon the circumstances as to the competency of the Court who will try the suit after it is withdrawn from another Court. A similar question arose in AIR 1966 Mys, 49 (Madappa & Ors. vs. Mudumallamma) as a result of adding Section 31 to the Madras Civil Courts" Act by way of amendment by the Mysore adoption of Laws Order 1956 is to provide a District Court for Kollegal Taluk. u/s 31 of the Madras Civil Courts" Act, the Court of District Judge, Mysore Division, at Mysore is the District Court for Kollegal Taluk and the "corresponding Court" to which the appeal pending in the Court of District Judge at Coimbatore stood statutorily transferred u/s 125 of the Act. It was held that the District Judge, Mysore Division at Mysore functioning as the District Judge for Kollegal Taluk had the power to transfer the appeal to the Civil Judge at Mysore and the later Court had the necessary jurisdiction to decide the said

appeal.

13. A question arose as to the jurisdiction of the Court who can transfer and the jurisdiction of the Court competent to try the case after transfer. In the full Bench decision reported in AIR 1972 MP (Babulal Vihikaji Mandloi vs. Duttatrya Narayan & Ors.) it is found u/s 20(2) of Madhya Pradesh Municipality's Act that the power conferred on the District Judge u/s 20 is as the presiding officer has established Court not as a person designata and consequently, it is, open for him to act in exercise of his general power u/s 7 of the Madhya Pradesh Civil Courts" Act or Section 24 of the CPC to transfer an election petition filed before him to the Additional District Judge situated at the same place and thus the later gets jurisdiction to hear and decide the petition. In the instant case, under the City Civil Courts" Act the Chief Judge has the right to distribute cases to other Judges. who are competent to try the case having proper jurisdiction thereof. Once the Chief Judge has the right to distribute the case even by withdrawal of the case from one Judge and transferring the same to another Judge there is no bar to consider the instant application on the grounds that the petitioner has reasonable apprehension as alleged. The word "distribution" of business relates to the powers of the Chief Judge in the background of the position that the Court where the case is to be transferred is competent and has the jurisdiction to try the same. u/s 23 of Bombay Civil Courts" Act it has been found that there is general power of transfer and this general power of transfer is quite exhaustive. The scope of the same has been considered in ILR 1967 Guj l.

14. Considering all the aspects of the matter this Court finds that Section 10 of the City Civil Courts" Act is wide enough and it enables Chief Judge to consider any application of a party to "transfer the case if he has reasonable apprehension that he will not obtain fair justice from a particular Court, Since the Learned Chief Judge has only considered the maintainability of the petition without considering the case of merit the impugned order is set aside and the matters is sent back to the Learned Chief Judge"s Court at Calcutta for disposing the application on merit. Till the disposal of this application, there will be stay of all proceedings of the Title Suit and the Misc. Case pending before the Trial Judge. The revision application is thus disposed of without any order as to costs. It is made clear that this Court has not decided anything as to the merit of the said application.