

(1987) 02 OHC CK 0010

Orissa High Court

Case No: Miscellaneous Judicial Case No. 128 of 1986

Bennett Coleman and Company
Ltd. and Others

APPELLANT

Vs

Sri Janaki Ballav Patnaik and
Another

RESPONDENT

Date of Decision: Feb. 6, 1987

Acts Referred:

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

Citation: (1987) 63 CLT 470

Hon'ble Judges: K.P. Mohapatra, J; B.K. Behera, J

Bench: Division Bench

Advocate: R. Mohnty, A.C. Mohanty, S. Mohanty, P. Palit, R.K. Mohapatra and I. Mohanty, for the Appellant; B.M. Patnaik, K.N. Jena, S.C. Lal, P.K. Choudhury, Party No. 1 and R. Patnaik, party No. 2, for the Respondent

Final Decision: Allowed

Judgement

B.K. Behera, J.

The Petitioner who figure as the Defendant Nos. 1 to 3 in Money Suit No. 450 of 1986 instituted by Mr. Janaki Ballav Patnaik, the Chief Minister of Orissa, pending in the Court of the Subordinate Judge, Bhubaneswar seek withdrawal of the suit to this High Court u/s 24 of the Code of CPC (for short, "the Code"). The Plaintiff in the suit figures as the opposite party No. 1 in this proceeding. The opposite party No. 2 herein is the Defendant No. 4 in the suit.

2. Appearing on behalf of the Petitioners, Mr. Mohanty has taken a number of grounds to justify the application for withdrawal of the suit. In the original application, apart from unspecific allegations in one part about some hurried orders passed by the learned Subordinate Judge, no particular imputation had been made touching his independence or impartiality. In paragraph 7 (Q), the Petitioners have

made it clear that even by implication, they would not make any grievance relating to the impartiality or fair approach of the learned Subordinate Judge while conducting the proceeding. Later, however, some allegations have been made in an application incorporating some amendments to the original application and it has been stated that for the reasons enumerated therein, the Petitioners apprehend that they may not get fair justice in the Court where the suit is pending. Mr. Mohanty has submitted that taking into consideration the convenience of the parties, the nature of the lis which is of a rare type for damages valued at rupees one crore and the serious consequences likely to follow when the suit is ultimately decided one way or the other and the complex questions involved, it would be just and reasonable that the suit is withdrawn to this Court. Mr. R. Patnaik appearing for the opposite party No. 2 has taken the same stand.

3. Mr. B. M. Patnaik appearing for the Plaintiff-opposite party No. 1 has contended that the grounds taken by the Petitioners and the opposite party No. 2 that they are not likely to get even-handed justice in the Court of the Subordinate Judge are unfounded. He has, however, submitted that the Plaintiff-opposite party No. 1 would leave the matter to this Court's consideration and discretion and has no serious objection to the suit being withdrawn to this Court, if this Court feels that regard being had to the nature of the suit and the questions involved, it would be just and fair to direct withdrawal of the suit to this Court.

4. In the application, a prayer has been made that after withdrawal of the suit to this Court, it should be heard by a Division Bench of this Court. But the learned Counsel for the Petitioners and the opposite party No. 2 have not pressed this at the hearing and Mr. Mohanty has stated that in other High Court having original jurisdiction, a learned Single Judge hears an original suit.

5. Coming to the questions of apprehension of the Petitioners and the opposite party No. 2 that they may not get justice in the Court of the learned Subordinate Judge, the materials appearing in the record would not reasonably justify such an apprehension. There is nothing to indicate that the learned Subordinate Judge has passed some interim orders under pressure or by being over-awed by the atmosphere and situations prevailing in the suit instituted by no other person than the Chief Minister of the State. If relating to some urgent matters, such as, injunction, some orders have been passed by the learned Subordinate Judge quickly and without undue delay, no fault can be found with him. It is, however, made clear that by this, nothing is said about the correctness or legality of any of the orders passed by the learned Subordinate Judge.

6. There should be reasonable grounds to justify a plea of apprehension in the mind of a party to a judicial proceeding about the fairness of a judge. Fanciful ideas, imaginary suspicions or capricious beliefs cannot be equated with reasonable apprehension. It must also be kept in mind that nothing should be done by this Court lightly nor should an undue observation be made which may tarnish the fair

image of the subordinate judiciary which, besides being under the administrative and disciplinary jurisdiction of the High Court, is also in its care and custody. As has so aptly been said by the Supreme Court in [Samsher Singh Vs. State of Punjab and Another,](#) .

"... The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity..."

In the instant case, no reasonable apprehension need be entertained by any of the Defendants merely because of some interim orders passed by the learned Subordinate Judge who seems to have conducted himself fairly and justly.

7. Coming to the other questions raised on behalf of the Petitioners and the opposite party No. 2, the fact remains that the suit is of a very high valuation. As can be seen from the nature of the suit and the objections raised on behalf of the Defendants with regard to the question of injunction, many important, legal and constitutional questions of general importance and public moment are likely to be raised at the trial. The learned Counsel for both the sides have submitted that it would tend to the general convenience of both the sides and their counsel if the suit is withdrawn u/s 24 (l) (b) of the Code and tried by this Court. Both the sides have contended that many of the orders to be passed by the learned Subordinate Judge are likely to be contested in this Court. As has been observed by the Supreme Court in *Baselium Mar Thoma Mathews and Ors. v. Paulose Mat Athanasium and others*², importance of shortening the longevity of litigation by transferring the suit to the highest desk of justice in the State for its expeditious termination may well be the driving force behind the order of a transfer.

8. As has been contended by Mr. Mohanty for the Petitioners, each of the aforesaid grounds, taken by itself may not justify the withdrawal of a suit but this Court is to take into consideration the totality of the facts and circumstances obtaining in the case, an overall view of the nature of the case and the convenience of the parties. The learned Counsel for the opposite party No. 1 has submitted that the Plaintiff opposite party No. 1 may have no objection to the withdrawal of the suit if this Court, in its wisdom, so decides. Merely because both the parties consent to a transfer or withdrawal no order may be passed only on that basis. But regard being had to the aforesaid facts and circumstances obtaining in the case, it would be just and reasonable to direct withdrawal of the suit from the Court of the Subordinate Judge, Bhubaneswar, to this Court.

9. The application under section, 24 of the Code is accordingly allowed. Money Suit No. 450 of 1986, with the connected Miscellaneous Cases pending in the Court of the Subordinate Judge, Bhubaneswar is withdrawn to this Court for trial and disposal. In the circumstances of the case, there would be no order as to the costs of this proceeding.

10. The record may be now placed before the learned Chief Justice for appropriate directions.

K.P. Mohapatra, J.

11. I agree.