

CASE NO.:
Appeal (civil) 338 of 2008

PETITIONER:
KULWINDER KAUR @ KULWINDER GURCHARAN SINGH

RESPONDENT:
KANDI FRIENDS EDUCATION TRUST AND OTHERS

DATE OF JUDGMENT: 11/01/2008

BENCH:
C.K. THAKKER & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

@ SPECIAL LEAVE PETITION (CIVIL) NO. 21147 OF 2006

C.K. THAKKER, J.

1. Leave granted.
2. This appeal is directed against the judgment and order dated November 17, 2006 in Civil Miscellaneous No. 22108 CII of 2006. By the said order, the High Court of Punjab & Haryana transferred Civil Suit No. 506 of 2003 from the Court of Smt. Asha Kondal, Civil Judge (Sr. Dvn.), Ropar to the Court of Sh. Y.S. Rathore, Additional Civil Judge (Sr. Dvn.), Chandigarh.
3. Short facts giving rise to present appeal are that Kandi Friends Educational Trust (\023Trust\024 for short) was set up for establishing professional educational institutions with prominent educationists and industrialists of the State of Punjab on September 24, 1997. It is the case of the appellant that Gurcharan Singh, her husband was the Founder Chairman of the Trust whereas the appellant was a Trustee along with the Founder Chairman. In 1998, certain new trustees were inducted including one B.S. Randhawa. In September, 2002, elections were held and Gurcharan Singh was again elected as the Chairman of the Trust. B.S. Randhawa and his wife Hardev Kaur raised protest against the said election. In December, 2002, Gurcharan Singh, Chairman of the Trust sought certain amendments in the Constitution of the Trust which were approved by majority though B.S. Randhawa and Hardev Kaur opposed to such amendments. On June 21, 2003, Gurcharan Singh, Chairman of the Trust was murdered while he was taking stroll in a park along with the appellant. B.S. Randhawa, who was one of the Trustees, was arrested as the main accused and was charged for committing murder of Gurcharan Singh. F.I.R. No. 271 of 2003 was registered on the same day at Mohali Police Station. In view of death of Gurcharan Singh, election of the Chairman was again held on July 23, 2003 and the appellant was unanimously elected as the Chairperson. Ms.

Japneet Kaur was nominated as trustee being daughter of late Gurcharan Singh and she also started attending meetings of the Trust. B.S. Randhawa and Hardev Kaur were obviously unhappy with the development. Hardev Kaur, hence, filed a suit on July 25, 2003 for a declaration that all proceedings conducted by the defendants in the Meeting dated July 23, 2003 in which the appellant was elected as the Chairperson were illegal, null and void and liable to be set aside. Certain other reliefs were also claimed. In the suit, the appellant herein was impleaded as defendant No. 4. Along with the plaint, the plaintiffs filed an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for interim relief, but only limited interim relief was granted and the plaintiff Smt. Hardev Kaur was allowed to attend meetings of the Trust. Other interim reliefs were expressly refused. Having failed to get relief sought in interim application, Hardev Kaur and B.S. Randhawa filed another suit, i.e. the present suit in October, 2003 in the name of Kandi Friends Education Trust through its so-called General Secretary Jaspal Singh. Though the appellant was duly elected as Chairperson of the Trust, she was wrongly described as Trustee and it was stated by the plaintiff that they were in-charge and in management of the Trust. A declaration was sought that the resolution dated October 14, 2003 adopted by the defendants was illegal, null and void. Consequential reliefs were also prayed.

4. On June 4, 2005, one more suit was filed by Jaspal Singh for declaration and permanent injunction against the appellant. In interim injunction, only status quo was ordered to be maintained by the Court. Jaspal Singh also filed a transfer application No. 14 of 2006 in the District Court, Ropar for transfer of suit from the Court of Smt. Asha Kondal to the Court of Shri A.S. Garewal, which was, however, dismissed as withdrawn.

5. On November 2, 2006, the Trust filed an application under Section 24 of the Code in the High Court of Punjab & Haryana being Civil Miscellaneous No. 22108 CII of 2006 for transfer of Suit No. 506 of 2003 pending in the Court of Smt. Asha Kondal, Sub-Judge, (Sr. Dvn.), Ropar to any other Court of competent jurisdiction in Chandigarh or in the State of Haryana in view of 'peculiar facts and circumstances of the case in the interest of justice'. It was inter alia alleged in the Transfer Application that though the suit was instituted in 2003 seeking injunction against the defendant-appellant herein and others, it was pending even in November, 2006. More than three years had passed and yet there was no 'much progress' in the case. It was further alleged that there was lot of local pressure which had led to delay and it had given advantage to the defendants as they were in

power and were trying to protract the proceedings. It was asserted that the Institution was one of the most prestigious institutions in the area and lots of funds were generated as there were several students. Hence, the Committee members who were in office were trying their level best to stall the proceedings by using various tactics. It was also stated that though the term of the appellant expired on August 31, 2005, she continued to be in power simply because no case filed against her was decided either way. A prayer was, therefore, made to transfer the case.

6. The appellant herein filed detailed reply to the application contending that false and scandalous allegations have been levelled by the plaintiff against the defendants which were not correct. It was submitted that suit filed by the plaintiff was not maintainable as there was no proper resolution and no authority had been given by the appellant-Chairperson to file such suit. It was further stated that no one could have a court of one's own choice and on the facts and in the circumstances, no case was made out for transfer of suit. It was stated that Zimni orders clearly revealed that there was no delay on the part of the defendants. The delay was largely attributable to the plaintiff-trust.

7. In this connection, it was stated in the reply as under;

Date of filing	:	11.11.2003
Issues framed	:	24.12.2003
For PWs.	:	30.3.2004
No PWs. Produced	:	Till date 29.11.2006

It was, therefore, submitted that the application was devoid of merit, laced with malice and was liable to be dismissed.

8. The learned Single Judge of the High Court observed that it was alleged by the plaintiff that though the suit was filed in 2003, there was no substantive progress in the suit. The learned Judge no doubt observed that certain allegations levelled by the plaintiff had been controverted and counter-allegations had been made by the defendants. But without going into the allegations and counter-allegations, it would be appropriate to transfer the suit to Chandigarh. Accordingly, by the impugned order, the suit was transferred and a direction was issued to decide the matter expeditiously by giving two opportunities to each of the parties spread over a period of six months.

9. The aforesaid order is challenged by the appellant in the present appeal. On January 5, 2007, notice was issued by this Court and further proceedings in the suit were stayed. Counter affidavit was thereafter filed. The matter then was ordered to be posted for final hearing.

10. We have heard the learned counsel for the parties.

11. The learned counsel for the appellant

contended that the High Court committed an error of law and of jurisdiction in transferring the case from Ropar to Chandigarh. It was submitted that no reasons/grounds have been disclosed for taking such action of transferring the suit. The counsel submitted that all the allegations levelled by the plaintiff had been controverted by the defendants and even the learned Judge of the High Court had observed in the order that there were allegations and counter-allegations by the parties. In spite of such situation, the Court passed the impugned order of transfer which is not in consonance with law. On merits, it was submitted that it was factually incorrect to allege that there was delay on the part of the defendants. The defendants had produced Zimni which went to show that it was the plaintiff and not the defendants who was responsible for the delay. If it is so, the High Court was wrong in passing the impugned order. Finally, it was submitted that the High Court was not justified in transferring the case in the court of a particular named Judge. Normally, no such order is passed. Even in the transfer-application, no such prayer was made by the plaintiff. The order to that extent, therefore, deserves to be set aside.

12. The learned counsel for the respondent, on the other hand, supported the impugned order. It was submitted that the High Court was satisfied that Section 24 of the Code confers discretionary power on the Court to transfer a case from one court to any other court subordinate to it. In exercise of the said power, an action has been taken which cannot be challenged under Article 136 of the Constitution. It was submitted that the High Court took into account \021ground reality\022 that a suit of 2003 which was of an urgent nature was not disposed of even in 2006. If, in the light of the above fact, the case is transferred, it could not be said that the order deserves interference in exercise of discretionary jurisdiction by this Court. It was, therefore, submitted that the appeal deserves to be dismissed.

13. Having considered rival contentions of the parties and having gone through the proceedings of the case, we are of the view that the impugned order deserves to be set aside. So far as the power of transfer is concerned, Section 24 of the Code empowers a High Court or a District Court to transfer inter alia any suit, appeal or other proceeding pending before it or in any Court subordinate to it to any other Court for trial and disposal. The said provision confers comprehensive power on the Court to transfer suits, appeals or other proceedings \021at any stage\022 either on an application by any party or suo motu.

14. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula

unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; \021interest of justice\022 demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a \021fair trial\022 in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.

15. In *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 2 SCR 378, this Court stated;

\023Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case\024. (emphasis supplied)

16. Similarly in *Subramaniam Swamy v. Ramakrishna Hegde*, (1990) 1 SCC 4, dealing with power of this Court to transfer a case under Section 25 of the Code, A.M. Ahmadi, J. (as His Lordship then was) stated; \023Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on

receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wide amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude-for the ends of justice-have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone\024.

(emphasis supplied)

17. In the case on hand, the High Court without stating anything whatsoever as to allegations and counter-allegations, without considering the reply submitted by the appellant herein and without recording any reason/ground passed the impugned order transferring the case. The learned counsel for the contesting respondent no doubt submitted that the Court has not observed anything since observations by a High Court one way or the other might prejudice one of the parties to the suit. It is true that normally while making an order of transfer, the Court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action. In the instant case, it was alleged by the plaintiff that though more than three years had passed from instituting the suit, it was not disposed of and delay had been caused by the defendants as they were in office and they wanted to prolong the proceedings so that they may take undue benefit of their status. The defendants, in the reply filed by them, contended that delay had not been caused by them, but it was the plaintiff who was responsible for not proceeding with the suit and was to be blamed for creation of such situation. In support of the contention, Zimni proceedings were relied upon. It was also urged that the plaintiff-side could not get favourable order on applications under Order XXXIX, Rules 1 and 2 of the Code and, hence, it wanted to get the case transferred. In view of the assertion and retraction by the plaintiff and the defendants, in our considered opinion, the High Court ought to have applied its mind to those aspects and prima facie satisfied as to the grounds put forward by the plaintiff in the transfer application and ought to have passed an order one way or the other without entering into the controversy in the suit. Unfortunately, the High Court allowed the application observing that it would be appropriate to transfer the suit pending in the Court of Smt. Asha Konal, Civil Judge, (Sr. Divn.), Ropar to the Court of Sh. Y.S. Rathore, Additional Civil Judge (Sr. Divn.), Chandigarh. In our opinion, powers under Section 24 of the Code cannot be exercised ipse dixit in the manner in which it has been done. Only on that ground and without entering into larger issue, the appeal deserves to be allowed and is accordingly, allowed.

18. For the foregoing reasons, the appeal is allowed. The order passed by the High Court is set aside and the matter is remitted to the High Court for fresh disposal in accordance with law after hearing the parties. On the facts and in circumstances of the case,

however, there shall be no order as to costs.

19. Before parting with the matter, we make it clear that we have not entered into correctness or otherwise of what is stated by the plaintiff or by the defendants and we may not be understood to have expressed any opinion on allegations and counter-allegations. As and when the matter will be placed before the High Court, the Court will take an appropriate decision on its own merits without being inhibited or influenced by the observations made by us in this judgment.

JUDIS