

CASE NO.:
Transfer Petition (civil) 44-45 of 2004

PETITIONER:
Mohit Kumar & Ors.

RESPONDENT:
Dato Mohan Swami & Ors.

DATE OF JUDGMENT: 23/03/2004

BENCH:
R.C. LAHOTI & DR. AR. LAKSHMANAN.

JUDGMENT:
JUDGMENT

O R D E R

R.C. Lahoti, J.

By these petitions under Section 25 of the Code of Civil Procedure, 1908, the petitioners herein seek Original Suit No.865 of 1997 titled as "Lt. Gen. M.L. Dar (Ret'd.) and Ors. Vs. Sri. Vikram Singh and Ors." pending in the Court of Addl. District Judge-II/FTC, Dehradun, Uttaranchal, being transferred to a court of competent jurisdiction at Delhi. F.A.O. 52 (D)/2002 pending at High Court of Uttaranchal at Nainital titled "Himalayan Institute Hospital Trust and Ors. Vs. Sri Vikram Singh and Ors." is also sought to be transferred to the High Court of Delhi at New Delhi. F.A.O. 52 (D)/2002 is an offshoot of other pending litigation between the parties. The prayer for transfer has been opposed on behalf of the respondents.

It is noteworthy that vide Order dated 24.11.03 passed in S.L.P. (c) Nos.11517-11518 of 2003, on the learned counsel for the parties agreeing for this Court exercising its jurisdiction under Section 25 of the CPC for transferring two other proceedings pending in two courts between the parties for hearing and decision in one court, this Court has directed Testamentary Case No.1 of 2002 pending in the High Court of Uttaranchal at Nainital and Letter of Administration Case No.26 of 2002 pending in High Court of Delhi (Original Side) at Delhi, to be transferred for hearing and decision to the High Court of Judicature at Allahabad, Bench seat at Lucknow. The said order of transfer has been carried out and the two matters are now before the High Court of Judicature at Allahabad, Bench seat at Lucknow, for hearing and decision in its Original Jurisdiction.

Though the prayer for transfer has been opposed on behalf of the respondents, having heard the learned counsel for the parties we are of the opinion that the suit which is now sought to be transferred is definitely associated with the two matters already ordered to be transferred. Although initially we were reluctant to accede to the present prayer for transfer, however, at the end, we have formed an opinion that the ends of justice demand such transfer being ordered. Accordingly, Original Suit No.865 of 1997 titled as "Lt. Gen. M.L. Dar (Ret'd.) and Ors. Vs. Sri. Vikram Singh and Ors." pending before Addl. District Judge-II/FTC, Dehradun, Uttaranchal and F.A.O. 52 (D)/2002 pending in the High Court of Uttaranchal at Nainital titled "Himalayan Institute Hospital Trust and Ors. Vs. Sri Vikram Singh and Ors.", are directed to be transferred for hearing and decision at Lucknow Bench Seat of the High Court of Judicature at Allahabad.

So far as the suit is concerned we are conscious that already over-burdened High Court shall have another original suit added to its pendency and the learned Presiding Judge shall have to record evidence. We, therefore, feel inclined to make an observation that the learned Presiding Judge now seized of the hearing of the suit pursuant to this order of transfer, may liberally exercise his power of permitting recording of evidence on commission excepting for such witnesses who are very material and who the learned Judge, in his discretion, feels necessary must appear before him that the demeanour of any witness may need to be watched and so on.

The transfer petitions stand disposed of. The learned Additional District Judge-II/FTC, Dehradun, Uttaranchal and the Registrar (Judicial) of the High Court of Uttaranchal at Nainital shall, soon on communication of this order, transmit the records to the Registrar (Judicial) of the High Court of Judicature at Allahabad, Bench Seat at Lucknow. The parties shall appear before the Registrar (Judicial) at Lucknow on 26.04.2004 for the purpose of ascertaining if the records have reached there and obtaining the date of hearing before the court.