

Ratanlal Vs. Suresh Kumar

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Court : Madhya Pradesh

Decided On : Dec-04-1986

Reported in : AIR1987MP178

Judge : K.L. Shrivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

Appeal No. : Civil Misc. Petn. No. 405 of 1986

Appellant : Ratanlal

Respondent : Suresh Kumar

Advocate for Def. : N.S. Purohit and ;A.H. Khan, Adv.

Advocate for Pet/Ap. : G.L. Gupta, Adv.

Disposition : Application dismissed

Judgement :

ORDER

K.L. Shrivastva, J.

1. This order shall dispose of the petitioner's application under Section 24 read with Section 151 of the Code of Civil Procedure. 1908 (for short 'the Code').

2. Facts and circumstances giving rise to this petition are these. The non-applicant Sureshkumar on 14-5-86, during summer vacation, filed the Civil Suit No. 66-A of 1986 in the Court of 2nd Civil Judge, Class I, Ratlam against the petitioner and others for permanent injunction claiming that in respect of the transport contract in his favour no other contract be given to any other person for a period of two years. On his application, an ex parte temporary injunction was granted on 14-5-86. Against this order the petitioner preferred an appeal in the Court of Shri Durve, 2nd Additional Judge to the District Judge. Ratlam.

3. Non-applicant Sureshkumar was granted several adjournments in the appeal and it was ultimately on 14-8-86 that the learned Judge observing that jurisdiction in disposing of appeal against an ex parte order of temporary injunction is of a limited nature and the same can be challenged before the trial Court on merits, dismissed the appeal as also the petitioner's application under Order 39. Rules 1 and 2 of the Code.

4. While disposing of the appeal, the learned Judge had directed the parties to appear before the trial Court on 25-8-86. After the aforesaid date the case suffered several adjournments at the instance of the non-applicant Sureshkumar and it was ultimately on 28-10-86 that the order granting ex parte temporary injunction was vacated.

5. Against the aforesaid order dt. 28-10-86 the non-applicant Sureshkumar on 29-10-86 filed a Miscellaneous Appeal in the Court of the said 2nd Additional Judge, Ratlam. The petitioner when called upon, put in appearance and at the very outset filed an application stating that he wants to apply for transfer of the appeal from that Court, but as the District Judge was on leave, he was unable to move such an application and in the circumstances he be granted a month's time for obtaining suitable orders.

6. Subsequently the same day when the petitioner's learned counsel appeared in the case, he requested the Court to take up another pending appeal with the application under Order 39 of the Code and prayed for grant of time in the newly instituted appeal so that he could file reply and counter-affidavit. The learned counsel also informed the Court regarding the petitioner's intended move for

transfer application as he had no hope of getting justice from the Court.

7. The learned Judge instead of taking up the old appeal adjourned it and after hearing arguments in the new appeal, he ordered stay of the operation of the order passed by the Civil Judge whereby the ex parte order granting temporary injunction in favour of the non-applicant Sureshkumar had been vacated.

8. The contention of the petitioner's learned counsel is that the learned presiding Judge despite having been informed that the petitioner wanted to move a transfer application, chose to pass the impugned order in hot-haste flouting the principles of natural justice and the petitioner has every reason to believe that he would not get justice at his hands. It is prayed that the impugned order dt. 29-10-86 passed by him be vacated and the appeal be transferred from his Court to any other competent Court.

9. Learned counsel for the non-applicants contend that if a Court despite information of an intended transfer application proceeds to deal with the case and passes any order no stamp of invalidity can automatically be attached to such an order. According to them no valid ground for transfer of the appeal is made out by the petitioner and at any rate there is no warrant in law to interfere with the impugned order while dealing with a transfer application under Section 24 of the Code.

10. The point for consideration is whether the application deserves to be allowed.

11. A perusal of Section 24 of the Code shows that in the matter of transfer of a case it leaves the judicial discretion of the High Court completely unfettered. However, where a party moves the Court on the ground that he apprehends that at the hands of the Presiding Officer he may not get proper justice, the burden of establishing the ground lies on him. Transfer in such a situation does involve an element of adverse reflection on the Presiding Officer and, therefore, must be the outcome of a careful consideration.

12. Transfer can only be ordered when the party has reasonable apprehension that justice will be denied to him. The mere fact that the party has suspicion in this

regard would not constitute a valid ground for transfer. The fact that the Judge has taken a particular view in other case, is no ground for transfer because by arguments he may be persuaded to change his view. A judicial order passed by a Judge cannot legitimately be made the foundation for a transfer application. The proper remedy against it is by way of an appeal or revision.

13. Jivaram's case, (1980 Jab LJ (Notes) 2) makes an illuminating reading in the matter of an application under Section 24 of the Code. Therein it has been pointed out that if some utterances are ascribed to a Judge and he refutes the same that is the end of the matter and cannot be made the subject of inquiry. It follows from the decision that the mere fact that a transfer application has been moved cannot successfully be advanced as an argument in support of the prayer for transfer. Otherwise the mere making of the application would ensure the result.

14. It is pertinent to point out that in the instant case the petitioner had taken no steps for the transfer of the appeal which he had filed before the learned Judge. It is significant to note that between the date of decision in the appeal preferred by the petitioner against the order granting ex parte temporary injunction in favour of the non-applicant No. 1 and the appeal preferred by the latter against the order vacating that ex parte temporary injunction nothing has been alleged to have transpired. Despite this the petitioner at the very outset confronted the learned Judge with the information that he intended to move a transfer application. In the circumstances set forth above, it appears that the sole motive behind the information was to forestall passing of any order in the appeal preferred by the non-applicant No. 1 with the result that the ex parte order of temporary injunction which had all along held the field was to stand vacated as ordered by the Civil Judge as this was to the petitioner's advantage.

15. It is true that though there is no legal bar to proceeding further but the normal practice is not to proceed with the case when information of an intended transfer application is given to the Court. Public faith in the administration of justice must be the prime concern of every judicial officer. Justice should not only be done but it must also appear to have been done. It appears that in the instant case the learned Judge seeing through the petitioner's motive considered it fit to pass the

order the same day. on 29-10-86, it is pertinent to note that during the period between 31-10-86 to 9-11-86 the Courts were to remain closed due to holidays and the learned Judge had fixed 10-11-86 as the next date.

16. Learned counsel for the petitioner in support of his submissions for transfer, with reference to the provisions in Sections 14 and 41 of the Specific Relief Act. 1963 and the proviso incorporated to Order 39, Rules 1 and 2 of the Code by M.P. Act No. 29 of 1984 found fault with the subsequent order dt. 29-10-86 passed by the learned Judge. Suffice it to say that transfer application is not the remedy against it and the defect in the order cannot legitimately be urged to buttress the stand previously taken by the petitioner.

17. Learned counsel for the petitioner also sought to make a capital out of the delay in the disposal of the appeal preferred by his client and advanced it as a ground in support of the transfer application. I am of the view that the petitioner should have impressed upon the Judge the need for its early disposal and cannot be permitted to seek support from it for the transfer application in respect of another appeal.

18. Learned counsel for the petitioner, on the authority of the decision in *Srirangam Municipality v. R.V. Palaniswami Pillai*, AIR 1951 Mad 807, also wanted this Court to vacate the order passed by the learned Judge whereby he maintained the status quo existing prior to the Civil Judge's order vacating the order granting ex parte temporary injunction. I am afraid, there is nothing in the decision to support the petitioner's prayer. The decision merely points out that if the High Court in exercise of its power under Section 24 of the Code withdraws a case from a subordinate court for the purpose of passing an interim order of injunction by itself on the ground that the closure of the subordinate Court due to vacation leaves the litigant with no other remedy, it cannot be said that the procedure adopted is an abuse of the process and a fraud on the powers conferred by the said section. It is no authority for the proposition that the section authorises the Court to interfere with a judicial order passed by a subordinate Court. Such interference is not permissible even under the inherent power under Section 151 of the Code. As pointed out in the decision in *Arjun Singh's case*, (AIR

1964 SC 993) inherent power cannot be invoked to cut across the powers conferred by the Code. As to the scope of the provisions in Gorelal's case, 1985 MPWN 534 makes an illuminating reading and so also the one in V.P.M.V.S. Samiti's case, 1986 Jab LJ 664. No doubt that words employed in the section are of widest amplitude and care has to be taken to ensure that the act of the Court does no injury to any of the suitors, but it is equally well-settled that the power thereunder has to be very sparingly used and cannot be exercised as an appellate power. With the pendency of the appeal, there is absolutely no case for interference under Section 151 of the Code.

19. As a result of the foregoing discussion, I am of the view that no ground for transfer has been made out and interference with the order in question is not warranted by law.

20. Before parting with the case, it may be pointed out that in case the Judge feels any embarrassment in dealing with the appeal in view of the transfer application against him, he may move the District Judge for the appeal being transferred from his Court. In case he intends to decide the appeal, in the circumstances of the case, it is highly desirable that he does so at his earliest convenience so that there is no occasion for grievance due to delay.

21. In the ultimate analysis, the application fails and is dismissed. Costs shall, however, be borne by the parties as incurred. They are directed to appear before the learned Judge on 17-12-86. The record of the Court below be sent back immediately.