

Rajkumar Vs. Saroj (Smt.)

Rajkumar Vs. Saroj (Smt.)

SooperKanoon Citation : sooperkanoon.com/849227

Court : Madhya Pradesh

Decided On : Feb-25-2010

Reported in : 2010(2)MPHT355

Judge : Piyush Mathur, J.

Appellant : Rajkumar

Respondent : Saroj (Smt.)

Advocate for Pet/Ap. : Shri. D.D. Bansal

Disposition : Petition dismissed

Judgement :

ORDER

Piyush Mathur, J.

1. This is a Civil Revision, preferred against an order passed in MJC No. 8/2009 on date 27-1-2010 by the District Judge, Vidisha in relation to an application preferred under Section 24 of the Code of Civil Procedure by the respondent/wife, seeking Transfer of Divorce Petition from Basoda to Vidisha which has been allowed by the District Judge.

2. The facts of the case reveal that a petition, preferred under Section 125 of Cr.PC on behalf of the wife, seeking maintenance from her husband was disposed

of by the Competent Criminal Court, situated at Vidisha and another proceeding initiated on behalf of the daughter of the applicant Rajkumar is pending under Section 125 of the Code of Criminal Procedure at Vidisha and an independent petition preferred by the husband under Section 13 of the Hindu Marriage Act seeking divorce from his wife, is pending in the Court of Additional District Judge, Basoda, District Vidisha bearing H.M. Case No. 20-A/2009.

3. This application seeking transfer of divorce petition was moved on behalf of the wife, in the Court of District Judge, Vidisha, on the ground that the wife, along with her infant daughter would be required to appear before the Basoda Court, for attending the proceedings pending under Section 13 of the Hindu Marriage Act, which is situated at a distant place from her village. The District Judge after considering the facts has allowed the application of the wife under Section 24 of the CPC and has permitted Transfer of Hindu Marriage Case No. 20-A/2009 from Basoda to the 3rd Additional District Judge, Vidisha for its decision.

4. I have heard Shri D.D. Bansal, learned Counsel for the petitioner on admission of the matter and have perused the impugned order passed by the District Judge.

5. A perusal of Section 24 of the Code of Civil Procedure demonstrate, that it empowers the High Court or the District Court to Transfer any suit, appeal or other proceeding to any other Court (which is sub-ordinate to it and) competent to try and dispose of the same. In the present case, the wife has invoked Section 24 of the Code of Civil Procedure on the ground that she resides in a close proximity to the Court, situated at Vidisha and has to maintain her young daughter aged two (2) years and it would be difficult for her to attend the hearing of the divorce petition, instituted by the husband at Basoda, which has been simply instituted with a view to harass the respondent/wife.

6. While analyzing the scope of Section 24, CPC and power of a Court to transfer a case, the Supreme Court has observed in a case, reported as : (2008) 3 SCC 659 Kulwinder Kaur v. Kandi Friends Education Trust, that convenience of the litigating parties at a particular place of trial, having regard to the nature of the evidence and issues raised by the parties must be considered and only thereafter, the power of transfer of a suit or appeal should be exercised by the Court, in the

interest of justice. For ready reference relevant observation of the Supreme Court made in the case of Kulwinder Kaur v. Kandi Friends Education Trust : (2008) 3 SCC 659, are quoted herein below:

21. 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 'at any stage' either on an application by any part or suo motu.

22. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket 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.

23. 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 the plaintiff or the 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 suits is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' 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 'fair trial' 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.

24. In *Maneka Sanjay Gandhi v. Rani Jethmalani*, this Court stated: (SCC p. 169, para 2)

2. Assurance 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 imperilling, 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.

(Emphasis supplied)

25. Similarly in *Subramaniam Swamy (Dr.) v. Ramakrishna Hegde* 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: (SCC p. 9, para 8)

8. Under 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 that 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 wider 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. 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.

(Emphasis supplied)

26. 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 matters 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.

7. A perusal of the record demonstrate that the maintenance proceedings initiated on behalf of the wife and her daughter were filed and tried before Judicial Magistrate First Class at Vidisha and the application seeking divorce has been filed by the husband at Basoda. The record further demonstrate that the wife and

the daughter are residing at Village Lohari, Tehsil Gyaspur, which is quite near to the Court situated at Vidisha. Therefore, looking to the locational convenience of the wife as also the infancy of daughter, it would be in the interest of justice that the divorce proceeding must be transferred to a place, nearer to the place of residence/village of the lady.

8. Therefore, I find that the District Judge, Vidisha has not committed any factual or jurisdictional error in allowing the application of the wife, preferred under Section 24 of the Civil Procedure Code, by transferring H.M. Case No. 20-A/2009 from Basoda to Vidisha, for its trial and decision by the Court.

9. Consequently, this revision fails and is summarily dismissed, without issuance of notice to the respondent.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com