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Court : Kolkata

Decided On : Sep-20-2000

Reported in : AIR2001Cal26

Judge : Malay Kumar Basu, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Section 24

Appeal No. : C.O. 2126 of 2000

Appellant : Nandini Chatterjee

Respondent : Arup Hari Chatterjee

Advocate for Def. : B.R. Bhattcharya and ;S. Mukherjee, Advs.

Advocate for Pet/Ap. : S.C. Dasgupta and ;D. Roy, Advs.

Disposition : Application dismissed

Judgement :
ORDER

Malay Kumar Basu, J.

1. By this petition under Section 24 of the Code of Civil procedure the applicant Smt. Nandini Chatterjee has prayed for transfer of the Acts (VIII) Case No. 247/96 from the Court of Additional District Judge, 5th Court Alipore to any other Court of

competent jurisdiction. The grounds on which such a transfer has been sought for may be summarised as follows.

2. While the above case was pending before the said Court of Additional District Judge, Alipore, O.P. husband Arup Chatterjee filed a petition praying for interim custody of their minor daughter, Anusua Chatterjee, where against the petitioner wife filed a written objection on September 30, 1999. The Presiding Officer of that Court Shri Tushar Bhattacharya who had joined that Court that every month, that is, September, 1999 while dealing with that the petition of the O.P. husband passed orders on different occasions which were not favourable to her and which according to her suffered from various infirmities. For example , on the date which he fixed on October 1, 1999 for appearance of the minor daughter before him in his Chamber, to the surprise of the petitioner, the O.P. husband entered into the Chamber of the Judge with four children, although there was no instruction for taking these other children into his Chamber along with the girl in question and the learned Judge instead of examining the daughter alone allowed entry of these other children into his Chamber and he then put questions to that girl did not touch any relevant aspect of the matter and the petitioner found that in the order passed by the learned Judge he had wrongly quoted her daughter as having expressed her desire to go to her grand parents and the cousins during the ensuing Puja and, further, the learned Judge also made observation that the minor girl was passing her days in a solitary state with her mother. These facts were in fact the product of surmise and conjecture of the learned Judge. Then, again, while allowing the petition of the O.P. husband the learned Judge did not place any reliance on the point repeatedly highlighted by her that the girl being 11 years of age was going to attain the stage of menstruation and at such a stage of adolescence, she required the company of her mother and should not be allowed to be with the father. The Court, thus, allowed the interim custody in favour of the father without properly appreciating the merits of the matter or the points urged by the mother. Secondly, it revealed to the petitioner during the pendency of the case that one Mr. Santi Sekhar Mukherjee being engaged as lawyer for the O.P. husband in connection with that case in question was a close acquaintance of the learned Judge and moreover he used to frequent the chamber of the learned Judge and this gave rise to apprehension in her mind that in such circumstances she might not get justice

or fair dealing from the present Presiding Officer of that Court.

Thirdly, in the order passed by that Court granting interim custody of the girl in favour of the O.P. husband it has been recorded by the Learned Judge that the girl in question expressed her desire to stay with her father during the Puja days; but when the petitioner asked her daughter, she disclosed that she did not make any such expression of her desire before the learned Judge, nor the learned Judge put any such question to her. Such misquotings of the statement of the minor girl by the learned Judge is found to have recurred in another order granting interim custody of the girl in favour of the father dated 29th March, 2000. This statement is as follows :--

'I am very happy with my father and grand parents and some aged cousins;

Nor do I long for mother, I am fine, rather my mother by telephone urged me to press before my father for sending me back to my mother. I am very much afraid to do go there. I was once assaulted by my mother with the handle of a hand fan not obliging my mother.'

3. Such quotings according to the petitioner are incorrect and were made with the motive of paving the way for passing a final order in favour of the O.P. husband. The petitioner is afraid for this also that the Learned Judge may be biased against her.

4. The petition has been contested by the O.P. by filing written objection denying all the material allegations of the petition.

5. The basic principle governing the granting of a petition under Section 24 of the C.P.C. which should be borne in mind that the petition like this is not to be dealt with in a light-hearted manner and transfer of a case from one Court to another should not be granted readily for any fancied notion of the petitioning litigant because of the reason that such transfer of a case from one Judge to another in effect casts doubt on the integrity competence and reputation of the concerned Judge. Unless and until a sufficiently cogent ground is disclosed transfer should not be allowed as a matter of course. The Court from which the case is sought to

be transferred must be shown to have disclosed a definitely unfair attitude or biased frame of mind against the petitioner and the petitioner must have some reasonable grounds for apprehending that he or she may not get justice from that Presiding Officer if the trial of the case is.

6. Mr. Dasgupta has strenuously argued to establish his point that although in this case there has been no single order in particular which may reveal any bias of the Presiding Judge in question against his client, the cumulative effect of all the orders successively passed by that Ld. Judge coupled with his various conducts mentioned in the petition is pointing towards the justification of the apprehension which has been haunting the petitioner that she would not get impartial justice from this Presiding Judge. Mr. Dasgupta has referred to a decision reported in (1976) 80 Cal WN 777 (Gora Chand Das v. Dipali Das) in which a Division Bench of this Court has held that though each of the allegations substantiated may not be sufficient, if taken in isolation to give rise to any apprehension in the mind of the petitioner, the cumulative effect of the allegations in the facts and circumstances of the case could be giving rise to a reasonable apprehension in the mind of the petitioner that he would not get justice if the case is tried by the Court in which it was pending. On a careful perusal of the facts and circumstances of this case I find that they are totally different from those of the present case. In that case under reference not only the learned Judge in question did not record the explanation given by the petitioner in respect of his answers in cross-examination but also he used intemperate language against the petitioner during his cross-examination and, what is more, some of the answers given by the other witnesses for the petitioner in the vernacular had been translated into English in a manner which had resulted in incorrect recording of the evidence which caused serious prejudice to the petitioner's case. Furthermore, some evidence considered material for the petitioner's case which were not objected to by the other side was not recorded by the Judge and, still more, a prayer for adjournment made on behalf of the petitioner to examine one of his witnesses which prayer was not opposed by the other side was turned down by the Learned Presiding Judge in question who directed that unless the said witness was brought before the Court on the next date the petitioners evidence would be closed and the evidence on behalf of the defendant would be taken. In the background of some such happenings the

petitioner in that case was suffering from a reasonable apprehensions that he would not get fair trial before that learned Judge in view of the fact that the learned Judge had not bestowed due care and attention which the petitioner deserved. Even in such a situation the learned Judges comprising the Division Bench opined that these conducts of the Judge in question taken individually were not sufficient to give rise to any apprehension in the mind of the petitioner; but when they were taken jointly, the Court would apply the principle that justice should not only be done but it must also manifestly be seen to have been done and then, however, the cumulative effect of all those acts and conducts of the learned Judge should be taken to be capable of producing a reasonable apprehension in the mind of the party concerned that he would not get proper Justice in the hand of that Judge. But the facts and circumstances in the present case are altogether different. Here the petitioner has not faced any such host of adverse orders from the Court. What is important, the order which was passed by the Court on one occasion granting interim custody of the minor girl for a limited number of days in favour of the father being moved against before this High Court, the period of interim custody appears to have been extended and in this way the propriety or correctness of the order passed by the Court in question was tested before a higher forum which modified that order in favour of the O.P. husband. The contention of the petitioner that the order of the Ld. Judge in question was not justified, therefore, has no legs to stand upon.

7. The allegations that certain statements of the minor girl have been misquoted by the learned Judge in his order granting the interim custody has not been substantiated. This order was passed admittedly after the girl was interrogated by the learned Judge in his Chamber in the presence of the learned Advocate of the petitioner herself. That fact has been also recorded in the order itself. But it is surprising that the learned Advocate Mr. S.C. Das in whose presence the questions were put before the girl by the Court and the answers of the girl were recorded has not challenged the correctness of such statements quoted by the learned Judge in his order as having been made by the girl. Therefore, it must be said that there has been no attempt on the part of the petitioner to substantiate such serious allegations against the learned Judge. By this order only eight (8) days' interim custody of the girl in favour of the father has been granted. It does

not sound at all probable that an experienced Judicial Officer would go to such an extent of misquoting the statements of a minor girl and, that too, when such statements were admittedly made in the presence of the learned Advocate of both the sides in order to make out the grounds for passing an order granting interim custody of the girl in favour of the father only for a period of 8/9 days. Afterall, such orders of the Court are Judicial orders and the proper remedy of an aggrieved party is to move the higher forum and challenge the correctness or legality of such order. The Judge may have arrived at a finding which may be right or wrong but passing of an incorrect or unjustified order alone cannot be treated as sufficient for raising a reasonable apprehension in the mind of the aggrieved party that he or she would not get justice at the hand of such a Judge in course of the subsequent proceedings of that case. In this connection a decision of the Apex Court has been relied upon by Mr. Bhattacharya, the learned Advocate for the O.P. This is reported in : AIR 1992 SC1133 (Puspa Devi Saraf v. Jaynarayan Parasram Purla). It has been held that when a petition for transfer of a suit is filed making allegations against the Presiding Officer, the report if and when called for from him should normally be confined to the allegations made against the impartiality and fairness of the Judge and not with respect to the correctness or otherwise of the orders passed by him. In other words in an application under Section 24 of the C.P.C. what should be looked into is the impartiality or fairness of the Judge in dealing with the matter, but when the question of correctness or incorrectness, propriety or impropriety of the order from the stand point of law is concerned, such aspects are to be taken care of in the appropriate proceedings namely, in the appeal or revision which may be preferred by the aggrieved party against the impugned judgment or order. When the Court is considering the question whether the party has apprehension that he will not get justice or fair dealing from a particular presiding officer of a Court, enquire should be made in order to ascertain whether there has been any revelation of biased attitude or unfair dealing from the side of that Presiding Officer and not whether order passed by him suffers from mere illegality or incorrectness. In the orders which are subjected to question by the petitioner in this proceeding I do not find any stamp of a bias or an partial attitude of the Judge concerned, what has been challenged repeatedly is the correctness or propriety of certain observations made by the Judge therein. In my

opinion such a question should not be the subject matter of enquiry in a proceeding under Section 24 of the C.P.C. Mr. Dasgupta has cited another decision reported in : AIR1957 Pat198 (Lalita Rajya Lakshmi v. State of Bihar) wherein it has been held that where there are circumstances in a case which may raise reasonable apprehension in the mind of the persons applying for transfer that he would not receive fair dealing at his trial or he may not have a fair and impartial trial and may get justice in Court where the suit is pending, the case should be transferred and in such a case in order to decide whether the facts and circumstances of the case are sufficient to raise a reasonable apprehension in the mind of the party applying for transfer, the Court should put himself in such a party's arm chair, because it is of fundamental importance that Justice should not only be done but also be manifestly and undoubtedly seen to be done,

8. Nobody disputes this principle of law, but in the present case no such exigency has arisen at all. The petitioner has failed to concretise her apprehension which seems to be more imaginary than real. She has failed to mention a single instance where the learned Judge has disclosed his biased mind or partial outlook in favour of the O.P. and against the petitioner. The orders which the Ld. Judge has passed or the procedure which he has followed in dealing with the petition for custody of the child may at the most, if at all, suffer from little lack of power of understanding or of expression, but they, by no means, constitute any act or conduct which is indicative of bias or which may lead to a reasonable apprehension that he or she may receive injustice at the hand of the Presiding Officer. A mere suspicion or presumption that he will not get fair trial cannot Justify transfer of the case.

9. It is not understood how the mere fact of three more children having accompanied the girl in question to the chamber of the Judge concerned in the absence of any direction of the court and the Judge having overlooked their uncalled for entry into his chamber could signify any adverse attitude on the part of the Judge against the petitioner; or how the fact of one Sr. Advocate Mr. Shanti Sekhar Mukharjee's being an acquaintance of the said Judge or his frequenting the chamber of that Judge by itself can lead to any apprehension as above, particularly when the said Mr. Mukherjee was appointed as an Advocate for the husband - O.P. about 3/4 years back before the Presiding Officer in question

joined this post of Addl. District Judge. Of course, had there been anything in the order passed by that Court palpably unreasonable or unjustifiably contrary to the interest of the petitioner, then such an order being read in the backdrop of the aforesaid happenings could however give rise to some doubt about impartial and unbiased frame of mind of the Judge. But, as it has been seen, the order of the Judge in question does not suffer from any such infirmity, the same having stood the test of scrutiny by this Court in its revisional Jurisdiction which found the order falling short of the extent to which it ought to have been in favour of the husband.

10. Having regard to the reasons discussed above, it is not considered a fit case where the case in question should be transferred to another Court for trial. If in the absence of cogent grounds and without justification a case is taken away from one Court and placed in the file of another Court for trial in exercise of the powers granted under Section 24 of Code of Civil Procedure, then the high morale and the independent spirit with which a judicial officer is to act cannot but be seriously dampened.

11. In the result, the present application Under Section 34 C.P.C. being without any merit, be dismissed. However, there will be no order as to costs.

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