

ARVEE INDUSTRIES & ORS.

V.

RATAN LAL SHARMA

September 13, 1977

[P. K. GOSWAMI AND JASWANT SINGH, JJ.]

B *Civil Procedure Code (Act V of 1908), as amended with effect from 1-2-1977 by s. 11 of the Code of Civil Procedure (Amendment Act No. 104 of 1976), 1976—Powers of the Supreme Court to transfer suits—Section 25, scope of.*

C The petitioners, who reside and carry on business in Delhi, filed suit No. 262/1974 for perpetual injunction against the landlord's (Respondent's son) interfering with their quiet and peaceful possession of their tenanted premises. The suit, having been dismissed for default, the respondent made an application u/s. 95 r/w s. 151 C.P.C. claiming Rs. 3000/- as compensation from the petitioners for malicious prosecution of the civil suit. Since the written statement filed in the said application by the petitioners was stated to contain several serious defamatory allegations against the respondent whereby he was lowered in public esteem and reputation, the respondent instituted suit No. 690 of 1975 on the original side of the Calcutta High Court after obtaining *ex parte* leave under clause (12) of the Letters Patent for the Calcutta High Court claiming Rs. 2,00,000/- as damages from the petitioners.

D In the transfer petition, the petitioners contended (i) it is a clear case of harassment of the petitioners in order to drag them to the Calcutta High Court where the respondent had not to pay any court fee in instituting such a suit for libel; (ii) Defendants reside and carry on business in Delhi and it will be a great hardship to defend such a suit by them in Calcutta; and (iii) there is no *prima facie* justification to institute a suit in Calcutta and there is a clear lack of territorial jurisdiction as the publication of libel was in Delhi even according to the pleadings.

E Allowing the petition, the Court,

HELD : (1) Section 25, Civil Procedure Code, in terms confers a new power on this Court which was earlier in the old section with the State Government. Section 25 C.P.C. provides that this Court, if satisfied that an order under the section is expedient for the ends of justice, may transfer any case from one High Court to another or from a civil court in one State to a civil court in another State. [420 H, 421 A]

F (2) This Court is the highest Court of appeal under the Constitution from all the High Courts in India. All High Courts in India within the meaning of Art. 366(14) of the Constitution r/w s. 3(25) of the General Clauses Act stand on the same footing so far as the Supreme Court is concerned and there is no basis for the submission that the suit cannot be transferred u/s. 25, C.P.C. from the original side of the chartered High Court to the Delhi High Court or that this Court has no jurisdiction to entertain such a transfer application. [420 H, 421 A-D]

G (3) It cannot be said that if a particular suit is *ex facie* instituted deliberately in a wrong Court it will not have any bearing whatsoever on the question of transfer. The Court may bear it as an additional factor if there is *prima facie*, on the pleadings sufficient justification for such a plea. [421 F]

H (4) The fact that the plaintiff will be greatly handicapped in several ways in being deprived of the procedure extant in Calcutta High Court is not an impediment u/s 25(5) C.P.C. in the matter of entertainment of the petition of transfer by this Court. [422 B]

(5) What is expedient for the ends of justice u/s. 25 C.P.C. will have to be judged upon the totality of facts and circumstances in a given case. The

instant case is a fit one where it is expedient for the ends of justice to transfer suit No. 609 of 1975 on the original side of the Calcutta High Court to the Delhi High Court. Having an overall view of the case, the relationship between the parties, the nature of the suit as well as the circumstances in which the suit has been filed in the Calcutta High Court, great hardships will be caused to the petitioners in defending such a suit in Calcutta. Convenience of the parties for a smooth and speedy trial will be more in Delhi. Since the cause of action has arisen out of the civil proceedings instituted by the respondents in the Delhi Court, it will add to the convenience of the parties so far as the production of records and even witnesses before the Trial Court is concerned. [420 C, 421 G-H, 422 A]

ORIGINAL JURISDICTION : Transfer Petition No. 1 of 1977.

Petition under section 25 of the Code of Civil Procedure.

S. N. Andley and *Uma Datta* for the Petitioners.

S. C. Mishra and *Pramod Swarup* for the Respondent.

The Order of the Court was delivered by

GOSWAMI, J. This is a petition for transfer of a suit, which is pending on the original side of the Calcutta High Court, under section 25 as amended by the Code of Civil Procedure (Amendment) Act, 1976 (No. 104 of 1976).

It appears the parties have been under severe strain for some time and there were litigations between them in Delhi Courts.

The petitioners, who are all residents of Delhi and carry on business in Delhi, are the tenants of the respondent's son in Delhi. The sole reason for tense friction between the parties has arisen out of the petitioners' civil proceedings for perpetual injunction against the landlord's interfering with their quiet and peaceful possession of the tenanted premises. A suit, being Suit No. 262 of 1974, was filed by the petitioners in the Court of the Sub-Judge, Delhi, with the above mentioned prayer and it is said that the same was dismissed for default.

After dismissal of the suit the respondent made an application in the Delhi Court under section 85 read with section 151 of the Code of Civil Procedure (C.P.C.) claiming Rs. 3000/- as compensation from the petitioners for malicious and vexatious prosecution of the civil suit. In answer to that claim the petitioners filed their written statement. It is stated that the written statement filed in that proceeding contained several serious defamatory allegations against the respondent whereby he was lowered in public esteem and reputation. It is, on that account, that the respondent instituted Suit No. 690 of 1975 on the original side of the Calcutta High Court claiming Rs. 2,00,000 (Rupees two lakhs) as damages from the petitioners.

We are informed by Mr. Mishra, the learned counsel for the respondent, that the respondent was not required to pay any court fee when filing the suit for damages for libel on the original side of the Calcutta High Court.

- A The petitioners having received the plaint in that suit from the Sheriff of Calcutta filed this petition for transfer under the amended section 25 C.P.C.

That section reads as follows :—

- B 25(1) "On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State".

- C This is a new power, in the widest terms, conferred on this Court. In the old section 25 C.P.C. the language was different and the power was of a restricted character and was conferred on the State Government. What is expedient for the ends of justice under section 25 C.P.C. will have to be judged upon the totality of facts and circumstances in a given case.

- D Mr. Andley, on behalf of the petitioners, submits that this is a clear case of harassment of the petitioners in order to drag them to the Calcutta High Court where the respondent had not to pay any court fee in instituting such a suit. He also submits that since the defendants reside and carry on business in Delhi it will be a great handicap to defend such a suit in Calcutta. He has also pointed out that there is no *prima facie* jurisdiction to institute this suit in Calcutta. Even on the pleadings, according to him, there is a clear lack of territorial jurisdiction. He has pointed out that the cause of action averred in the plaint shows that the publication of the libel was in Delhi, which was in terms stated in para 8 of the plaint, as being outside the jurisdiction of the Calcutta High Court. He submits that it will be near impossible for his clients to defend such a suit in Calcutta.

- F Mr. Mishra at the very outset submits that this Court has no jurisdiction to entertain this application under section 25 C.P.C. since the proceedings are pending on the original side of the Calcutta High Court which gave leave to the respondent to institute the suit. Clause 12 of the Letters Patent for the Calcutta High Court, *inter alia*, states that when the plaint discloses that only part of the cause of action for a suit is within the jurisdiction of the Calcutta High Court, leave has to be obtained from that Court before instituting the suit. It is stated that leave has been obtained from the Calcutta High Court by filing an application under clause 12 of the Letters Patent. It is, however, admitted that leave was granted, *ex parte*, and it will be open to the defendants to pray to the High Court for revocation of the leave.

- H After hearing Mr. Mishra at some length, we are not at all impressed by the aforesaid submission. This Court is the highest Court of appeal under the Constitution from all the High Courts in India. Section 25 C.P.C., in terms, confers a new power on this

Court which was earlier in the old section within the State Government. Section 25 C.P.C. provides that this Court, if satisfied that an order under the section is expedient for the ends of justice, may transfer any case from one High Court to another or from a civil court in one State to a civil court in another State.

Under Article 366(14) of the Constitution "High Court means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

- (a) any Court in the territory of India constituted or reconstituted under this Constitution as a High Court, and
- (b) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution".

(See also S. 3(25) General Clauses Act).

All High Court in India stand on the same footing so far as this Court is concerned and there is no basis for the submission that the suit cannot be transferred by this Court under section 25 C.P.C from the original side of the chartered High Court to the Delhi High Court or that this Court has no jurisdiction to entertain such an application. We are clearly of opinion that the submission is devoted of substance and is rejected.

Mr. Mishra next contends that we should not at all be influenced by the submission that the Calcutta High Court may not have territorial jurisdiction to entertain the suit. That will be an objection which the defendants can take up before the Calcutta High Court which will decide it after hearing the parties. That kind of a plea would not furnish justification for an application under section 25 C.P.C. says Mr. Mishra.

It cannot be said that if a particular suit, is *ex facie*-instituted deliberately in a wrong court, it will not have any bearing whatsoever, on the question of transfer. The court may bear it in mind as an additional factor if there is, *prima facie*, on the pleadings sufficient justification for such a plea. It is, however, not necessary for us to express finally on the question of jurisdiction in this case. That on the pleadings there is a strong possibility of the High Court accepting the petitioners objection to territorial jurisdiction is also a relevant factor in the background of this case.

On the merits, we are clearly of opinion that having an overall view of the case, the relationship between the parties, the nature of the suit, as well as the circumstances in which the suit has been filed in the Calcutta High Court, great hardship will be caused to the petitioners in defending such a suit in Calcutta. On the other hand, the plaintiff has two sons in Delhi and he had earlier instituted action in the Delhi court against the petitioners. Convenience of the parties for a smooth and speedy trial will be more in Delhi than in Calcutta. Since the cause of action has arisen out of civil proceedings in the

A Delhi court, it will add to the convenience of the parties so far as production of records and even witnesses before the trial court is concerned.

Mr. Mishra also draws our attention to section 25(5) C.P.C. and submits that the plaintiff will be greatly handicapped in several ways in being deprived of the procedure extant in Calcutta High Court. We should not, therefore, entertain the petition, says counsel. We do not find any impediment under section 25(5), C.P.C. in the matter of entertainment of the petition of transfer by this Court. We however, express no opinion about section 25(5) as it will be for the Delhi High Court to deal with the matter if any question is raised before it with regard to any aspect appertaining to that section.

C This is a fit case where it is expedient for the ends of justice to transfer the suit No. 690 of 1975 on the original side of the Calcutta High Court from that High Court to the Delhi High Court. We, therefore, direct that the said suit shall be transferred to the original side of the Delhi High Court for disposal in accordance with law. The petition of transfer is allowed. We, however, make no order as to costs.

1)

S.R.

Petition allowed.