
(1963) 10 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 2767 of 1963

Dr. Hardit Singh Jaswant Singh

APPELLANT

Vs

Bhagat Jaswant Singh and Others

RESPONDENT

Date of Decision : 18-10-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Contempt of Courts Act, 1971 — Section 3

Citation : (1964) 34 CompCas 402 : (1964) 66 PLR 331

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Advocate : G.S. Chawla, for the Appellant; D.D. Khanna and Party-in-Person, for the Respondent

Judgement

I.D. Dua, J.—Dr. Hardit Singh Defendant No. 1 in the suit pending in the, Court of Shri H.S. Ahluwalia, Subordinate Judge 1st Class, Ambala, has applied u/s 24 of the CPC for transfer of the suit from the Court of the said Subordinate Judge, to some other Court of competent jurisdiction having earlier unsuccessfully approached the learned District Judge for the same relief.

2. Bhagat Jaswant Singh instituted the suit in question for the recovery of Rs. 5,000/- against Dr. Hardit Singh, Shri Hargobind, Superintending Engineer, and Shri Pritam Singh, Senior Assistant to Electric Inspector now Executive Engineer. The suit, has now reached almost the final stage, and, according to Dr. Hardit Singh's averments in the Application for transfer in this Court, written arguments have already been submitted by the parties, The Petitioner's grievance is that the learned Subordinate Judge has created a feeling that he has a soft corner for Bhagat Jaswant Singh, by giving to the latter undue accommodation.

The case was fixed for arguments for the first time on 21-2-1963 and since then there have been 9/10 hearings but the case was always adjourned on account of failure of Bhagat Jaswant Singh's counsel to begin his arguments. The Petitioner

also alleges to have been informed by one Shri Ranjodh Singh of Ambala City who is stated to have seen Shri Tejinder Singh son of Bhagat Jaswant Singh coming out of the house of the learned Subordinate Judge on 2-8-1963 and to have also seen Bhagat Jaswant Singh's car parked in front of the Subordinate Judge's house. An affidavit sworn by Shri Ranjedh Singh was filed by Dr. Hardit Singh in support of his Application for transfer in the Court of the learned District Judge. The learned District Judge asked for the learned Subordinate Judge's comments and in response the learned Subordinate Judge stated in the end of his comments as follows:

I would request the learned District Judge to verify for himself as to on whose behalf attempt has been made, to approach, what is the real reason behind this Application....

This passage has been quoted by the Petitioner in his Application in this Court and it has been relied Upon for supporting the contention that the Petitioner's apprehension is well founded.

3. In his submission the learned Counsel has referred me to the record of the trial Court and has attempted to show that from 14-2-1963, when the evidence was closed adjournments have been granted to the Plaintiff on untenable grounds. On 14-2-1963 after closing the evidence the case: was adjourned to 21-2-1963 for arguments. On 21-2-1963, the Plaintiff's counsel was not ready for arguments with the result that the case was adjourned to 7-3-1963. On that date the counsel for the parties were present but, according to the Court's order, talk for compromise was going on with the result that time was required for pursuing the purpose. The case was thus adjourned to 19-3-1963. On the last mentioned date the compromise was not effected but the case was nevertheless adjourned to 26-3-1963 for arguments. On that date the Presiding Officer being on leave the case was adjourned to 28-3-1963. On 28-3-1963 without assigning any reason the case was again adjourned for arguments to 20-4-1963 because no earlier date appeared to suit the counsel.

On 20-4-1963 also the Plaintiff's counsel wanted time for arguments and the case was adjourned to 30-4-1963. On 30-4-1963 a miscellaneous Application was filed by the Plaintiff and a copy was given to the opposite party for reply on 9-5-1963. On 9-5-1963 the reply was filed and the case was adjourned for arguments to 14-5-1963. On 14-5-1963 Ch. Bakhtawar Singh could not argue the case on account of some death in the family with the result that the case was adjourned to 25-5-1963. On 25-5-1963 arguments on the Application for additional evidence were heard but the Court found no ground for granting an opportunity to lead more evidence. The Plaintiff's counsel, however, again could not prepare arguments on account of the death of some relative with the result that the case was adjourned to 1-6-1963. On 1-6-1963, however, the Court became conscious of the case being very old and passed an order that no further opportunity would be granted. On 1-6-1963 Ch. Bakhtawar Singh was out of station and Shri Manmohan Singh appearing in his place expressed his inability

to argue the case. The Court, however, did not consider it feasible "to wait for Ch. Bakhtawar Singh indefinitely" with the result that his arguments were closed and the case was adjourned to 13-6-1963.

The Court was unable to dictate orders by 13-6-1963 because the Plaintiff's counsel had put in an Application for permission to "address arguments afresh". Parties then agreed that arguments may be heard after 4 P.M. on the following day i.e. 14-6-1963. The case was accordingly adjourned on payment of Rs. 25/- as costs. On 14-6-1963 the counsel for the parties stated that it was not possible to argue the case on that day but they promised to address the arguments during the vacation on a date to be fixed by them after mutual consultation. The case was thus adjourned to 16-7-1963. On 16-7-1963 it appears that no date could be agreed upon between the counsel for the parties during the vacation with the result that written arguments by the counsel for the Plaintiff were filed to which the Defendants' counsel raised no objection. 23rd of July, 1963 was fixed for reply. On 23-7-1963 written arguments could not be prepared because of their length. The case was thus adjourned to 30-7-1963. On 30-7-1963 written arguments of the Defendants were put in and the case was adjourned to 6-8-1963 for the opposite party's reply. On 6-8-1963 the proceedings having been stayed nothing more was done by the Court. It appears that In the meantime on 5-8-1963 Dr. Hardit Singh had approached the learned District Judge for transfer of the case.

4. From the above narrative It is clear that the petitioning Defendant's counsel was throughout an acquiescing party to the various adjournments with the result that I find it difficult from this record to infer that there could be any reasonable apprehension In the mind of the Petitioner that he would not get justice from the learned Subordinate Judge on account of undue bias shown by him in favour of the Plaintiff and against the Petitioner. Had the petitioning Defendant opposed the adjournments and the learned Subordinate Judge had in face of such opposition granted adjournments, there might have been some basis for apprehending a biased leaning in favour of the Plaintiff.

5. The Petitioner's counsel has argued that since the learned Subordinate Judge was disposed to grant the adjournments his client's lawyer did not think it would serve any useful purpose to oppose adjournments. regret my inability to appreciate this point of view; Indeed this contention neither finds support from the petitions for transfer in his Court and in the Court of the learned District Judge, nor is it, in my opinion, fair and just to the Petitioner's lawyer in the trial Court whose duty it undoubtedly was to protect his client's interests and rights with courage and ability. To refrain from submitting a respectful but firm and dignified protest to the adjournments, in the defence of his client's rights under the law, merely because the Court was believed by him to be inclined, in the discharge of its judicial duty, to unduly accommodate the Plaintiff, if true, cannot but be considered to be an unhappy lapse on the part of the lawyer in the discharge of his professional duty towards his client, and a deplorable departure

from the high traditions of an independent, able and conscientious bar.

To preserve the administration of justice under the law, if I may at this stage so put it, is the special responsibility of the professional lawyer in our Republic, who, in addition to being the pleader of his client, and, the defender of his rights, is an officer of the Court. The lawyer has, therefore, to be learned in law, independent and devoted in his duty towards his client, whose cause he is engaged to plead conscientiously, respectful and dignified in his address to the Court, and, loyal to the Constitution and the laws of this Republic. Such being the duties and responsibilities of the professional lawyer any undue hesitation in pleading for his client deserves to be viewed with disfavour. But on the existing record before me I am clearly disinclined to sustain the Petitioner's contention and am unable to hold that the adjournments were not opposed by the Petitioner's counsel merely on account of the Court's pre-disposition. In my view, the adjournments were apparently granted with the consent of both parties; in any event with the tacit acquiescence of the Petitioner's counsel.

6. This Court, however, cannot consider the manner, in which this case has been adjourned by the trial Court after the close of evidence as disclosed on the record, to be satisfactory. The Court has, in my opinion, betrayed an unhappy unawareness of the directions issued "by this Court on the point. In para 16 of Chapter 1-H of Volume 1, High Court Rules and Orders, this Court has laid down guiding considerations in the matter of adjournments for arguments consider it necessary in the case in hand to reproduce them in extenso:

The practice of adjourning a case for arguments after all the evidence has been given should, as a rule, not be followed except in long and complicated cases. But this observation does not extend to an adjournment, when reasonably necessary, for a reply on the whole case by the party who is entitled to such reply nor to an adjournment for argument on a question of law which may have arisen during the trial and may have been, for convenience sake, reserved for argument until after the taking of the evidence. Whenever a case has to be adjourned for arguments it should be adjourned to the next day, or, if this is not possible, to a very near date.

it is also relevant in this connection to remind the subordinate Courts about the directions contained in Para 1, Part A, Chapter 11 of this very volume where this Court has pointed out in unmistakable terms the essential necessity of the trying Judge proceeding to the consideration of the judgment while the demeanour of the witnesses and their individual characteristics are fresh in his memory.

7. In the case in hand from February, 1963 to 6th of August, 1963 for a period of nearly six months the trial Court went on adjourning the case for reasons which appear to me to be wholly unjustified, though I am unconvinced that this was done to unduly accommodate the Plaintiff. After August, 1963, of course the delay has been caused on account of the transfer Applications.

8. The Petitioner's learned Counsel has next contended that Shri Tejinder Singh

son of Bhagat Jaswant Singh was seen coming out of the house of the learned Subordinate Judge on Friday the 2nd August, 1963 when the Defendant's car was also seen parked outside the learned Subordinate Judge's house. This allegation was also made before the learned District Judge but was in view of the report of the Subordinate Judge not accepted by him. In support of it the Petitioner had produced an affidavit by one Ranjodh Singh son of Gurdial Singh aged 25 years, resident of Ambala City (this is how he describes himself in the affidavit) in the Court of the learned District Judge but no affidavit by the said Ranjodh Singh has been produced in this Court. The learned District Judge, as noticed earlier, did not uphold this allegation. The Petitioner's counsel has, however, desired me to take into consideration the affidavit filed in the Court of the District Judge and on its basis to sustain the allegation. I find it difficult, in agreement with the learned District Judge, to sustain the allegation.

The Application for transfer in this Court is not an appeal from the order of the learned District Judge declining to transfer the suit, with the result that an Application in this Court which is an independent original proceeding should, generally speaking, be self-contained and, therefore, supported by a properly sworn affidavit presented in this Court; a departure from this rule can only be permitted--if at all--in special cases and for cogent reasons. No such reason has been made out on this record. But this apart the affidavit produced before the learned District Judge which I have looked at from the record sent for by me does not inspire my confidence. It does not inform the Court about the profession or trade of the said Ranjoah Singh. It must be remembered that every person other than a Plaintiff or a Defendant in a suit in which the Application is made who makes an affidavit must be described in such a manner as would serve to identify him clearly; that is to say, by the statement of his full name, the name of his father, his profession or trade and the place of his residence. The affidavit made by Ranjodh Singh does not conform to this rule of practice and does not disclose his profession or trade: it is, therefore, not possible to know his status or station in life which may afford some assistance in determining the extent to which reliance can be placed on his affidavit. And then this affidavit (dated 5-8-1963) merely affirms that he had seen Tejinder Singh son of Bhagat Jaswant Singh coming out of the house of Shri H.S. Ahluwalia, Subordinate Judge, "on Friday 2nd August, 1963.

The words in the inverted commas were written with pen and ink after scoring out typed words "about a week, back". The affidavit does not mention that Ranjodh Singh had also seen the Plaintiff's car in front of the learned Subordinate Judge's house, though in the petition for transfer presented in the Court of the District Judge it is asserted in paragraph 5 that Ranjodh Singh had informed the Petitioner that the former had seen the Plaintiff's car in front of the Subordinate Judge's house. In the Petitioner's own affidavit also he did not affirm this assertion. In this Court, however, the Petitioner has sworn "inter alia" that Ranjodh Singh had informed him that the former had seen the Plaintiff's car in front of the learned Subordinate Judge's house on 2-8-1963, vide

paragraph 4 of his affidavit dated 5-9-1963. In paragraph 5 he has affirmed that in support of this allegation an affidavit of Ranjodh Singh was filed in the Court of the learned District Judge, but this, as already shown, is not quite correct. After considering all the circumstances mentioned above including the comments of the learned Subordinate Judge forwarded to the learned District Judge, I am clearly inclined, in agreement with the learned District Judge, to reject the Petitioner's contention.

9. Lastly, the Petitioner's counsel has referred me to the report of the learned Subordinate Judge submitted in the Court of the District Judge and pointed reference has been made to the last sub-paragraph of the comments which is in the following terms:

I have absolutely no objection to the transfer of the case and would rather be glad to get rid of the unnecessary botheration, but I would request the learned District Judge to verify for himself as to on whose behalf attempt has been made to approach, what is the real reason behind the Application and also preferably transfer the case to his own file.

It is stressed that in this sentence the learned Subordinate Judge has in a subtle manner insinuated that the Petitioner had tried to approach him, which is not correct. This, according to the counsel, is sufficient to raise a reasonable apprehension in the Petitioner's mind that he would not get a fair trial and justice in the Court below.

10. The learned Counsel for the Respondents has on the other hand strongly urged that no cogent ground for transfer has been made out in this case and that the Petitioner had presumably himself approached the learned Subordinate Judge but having failed to succeed in his object he has tried to throw mud on the learned Judge. To transfer the case now would really amount to placing premium on unscrupulous conduct. The counsel has also submitted that it is desirable for the Subordinate Judge who has witnessed the demeanour of the witnesses and the manner of their giving evidence to finally decide the suit.

11. I have devoted my most earnest and serious attention to the rival contentions of the parties. In my opinion, the Petitioner had no reasonable ground for approaching the learned District Judge for transfer of the case because on the facts and circumstances disclosed there could be no reasonable apprehension in the Petitioner's mind that he would not get a fair and an impartial trial from the Court of the learned Subordinate Judge. Fanciful ideas, imaginary suspicions and capricious beliefs are no substitute for and cannot be equated with reasonable apprehension; and in the case in hand if Ranjodh Singh's affidavit is excluded--as I am inclined to exclude it as wholly unimpressive--all that is left is the unduly long adjournments of the case after the close of the evidence. These adjournments clearly appear to be with the consent of the parties or at least with the Petitioner's acquiescence with the result that they can by no means give rise to any reasonable apprehension in the

mind of a reasonable man that the learned Subordinate Judge was unduly biased in favour of the Plaintiff. I should, however, not be understood to lay down that actual bias is necessary for founding plea of reasonable apprehension. Had the matter stood there perhaps the case would have created no difficulty. There are, however, certain other factors which are not easy to Ignore.

12. The language used by the learned Subordinate Judge in the last paragraph of his comment does seem to indicate that the allegations made against him have to some extent upset him and have perhaps aroused his indignation as a result of feelings of resentment. I do not mean to say for a moment that unfounded allegations cannot or do not upset a normal human being; and a judicial officer is after all essentially a human being subject to all human feelings, emotions and weaknesses. The question, however, is: Is it not a vital element in our administration of justice that justice should not only be done but it must also be manifestly and undoubtedly seen to be done: in other words that it should be clearly plain to the parties to the litigation that justice is being administered in an even-handed manner by a sober, impartial and an upright Judge. The Judge, it may be remembered, is expected to be serene and disciplined, even though his patience may be sorely tried. No litigant should leave the Court feeling reasonably that his case has not been heard or considered on its merits by an impartial Judge who is uninfluenced by any extraneous consideration outside the judicial sphere or by injudicious emotions or feelings of dislike, hostility or indignation against him.

13. I am not unmindful of the Respondents' contention that no litigant should be allowed deliberately and designedly to create by his own conduct a situation adverse to himself and then to take advantage from it; and I am fully conscious of the submission that such tactics should not be allowed to interfere with the normal functioning of Courts; nor should they be permitted to be utilised by unscrupulous parties for taking a case out of a particular Court; but then this is only one important aspect which deserves consideration: the other aspect mentioned earlier is equally--if not more-- important, in that, it touches the bigger question of public confidence in the administration of justice even in the face of acts of indiscretion by misdirected or ill-advised litigants. It is in this vital aspect that one discerns the real distinctive feature of our system of justice as it is being shaped by Republican Courts as Inheritors of the English tradition and conception of justice. Looked at in the background of this vital element in our democratic system, it may be observed that at times righteous indignation may unconsciously get the better of the sense of judicial impartiality; and the discharge of judicial functions and duties under stress of emotion though not actually failing in ultimately doing justice, may fail in the doing of it.

14. My attention has been drawn to an earlier Application made by the Plaintiff Bhagat Jaswant Singh in this Court in February, 1961 for the transfer of this very-case from the Court of Shri Sarup Chand Soel, Subordinate Judge, after having unsuccessfully approached for transfer to the Court of the learned District Judge.

That petition was dismissed by a learned Single Judge of this Court as infructuous because the Subordinate Judge concerned had in the meantime been transferred. I also find on the record an Application by the Plaintiff u/s 3, Contempt of Courts Act for initiating proceedings for contempt of Court presented before the learned District Judge on 30-8-1963 in which it is asserted that on 6-8-1963 the trial Judge had observed in Court that those who make approaches to the Court make transfer Applications on feeling disappointed. According to the Plaintiff's averments Dr. Hardit Singh had apparently approached the learned trial Judge. The learned District Judge was requested to direct the trial Court to disclose the name of the person who had approached him. The learned District Judge has, however, in his order observed that the necessary Application should be made to the trial Court itself.

15. Considering the peculiar circumstances of this case, I am of the opinion that interests of justice would best be served if the case is transferred to the Court of the learned District Judge who should himself dispose it of at an early date. The evidence has been closed and the case is at the arguments stage it would be for the learned District Judge and the parties to see if oral address is necessary or if written arguments would serve the purpose. The Petitioner's learned Counsel had during the course of his arguments asserted that the entire evidence had not been recorded by the present learned Subordinate Judge and that, therefore, the consideration that the judicial officer who has recorded the evidence should preferably decide the cause would not be attracted. Whether or not this is so, in my opinion, the long period of time that has elapsed since the recording of the evidence, renders it somewhat unlikely that the learned Subordinate Judge would be having fresh In-his memory the impressions created on his mind by the demeanour and the individual characteristics of the witnesses examined by him. The learned District Judge would apparently be in no worse position in deciding this case on the written record.

16. I must, however, make it clear that this order, does not mean or imply that I entertain any doubts about the integrity and impartiality of the learned Subordinate Judge and it should not be construed to cast any adverse reflection on him in this respect. It is the peculiar and special circumstances disclosed on this record which have induced me to feel that the cause of justice would be better served on the whole, if the case is transferred to the Court of the learned District Judge himself for final disposal. It may be recalled that the learned Subordinate Judge has also himself in his report suggested that the case had better be transferred by the learned District Judge to his own file.

17. I must before finally closing the judgment also advert to one other aspect, and that is justice is one of the main pillars of our Constitution: and a fortiori of our system of government. Our judicial system has its roots in the British judicial system and our Courts are the inheritors of the traditions of the British Courts of justice. Our judicial officers have, therefore, a great responsibility; they must so conduct themselves that one may with justification be able to say "If justice had

a voice she would speak like an Indian Republican Judge." To function with this end in view, the judicial officers must, for one thing, not only refuse to allow themselves to be approached privately but must also take strong steps against any person who makes any effort to influence them outside the Court. Theirs is the duty to discharge their judicial functions in open Court in the presence of the contestants. It is only on realising the ideal just stated that the Indian people can claim to be true to their democratic Constitution so far as judicial administration is concerned. I have made this observation because if anyone had tried to approach the learned Subordinate Judge he should in my opinion have immediately taken strong steps against the person concerned. I need not say anything more on this subject on this occasion.

18. Parties are accordingly directed through their counsel to appear in the Court of the learned District Judge on 28-10-1963 when another suitable date would be given to the parties for further proceedings. It is hoped that the case would now be disposed of without any undue delay. In the circumstances of the case there would be no order as to costs.