
(2012) 12 AHC CK 0118
In the Allahabad High Court
Case No : Writ Petition No.719 (cons.) of 2012

Hukum Singh

APPELLANT

Vs

Joint Director Consolidation, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 65(1A)

Citation : (2012) 12 AHC CK 0118

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Vinod Kumar Singh, learned counsel for petitioner, learned State counsel and perused the record.

2. By means of the present writ petition the petitioner has challenged the order dated 14.12.2012 passed by Joint Director Consolidation, Uttar Pradesh, Lucknow by which the transfer application for the petitioner has been rejected.

3. Needless to mention herein that the power as provided under Rule 65 (1A) of the Rule for transferring the matter from one court to another court by the competent authority in the consolidation proceedings is to be decided and adjudicated on the same principles and guidelines as provided under Section 24 CPC.

4. Thus the competent authority while exercising the said power under Rule 65(1A) of the Rules shall act and pass orders on the same parameters as provided for transferring the matter under Section 24 C.P.C. In the case of Smt. Vandana Sinha Vs. Yogendra Sinha, 1982 A.L.J. 253 this Court while interpreting Section 24 CPC has held as under:

" Section 24 C.P.C. does not prescribe any grounds for ordering the transfer of a case. It may be ordered suo motu. That may be done for administrative reasons. But when an application for transfer is made by a party, the Court must issue

notice to the other party and hear the parties before ordering a transfer. That implies that the Court must act judicially in ordering a transfer on the application of a party, or in refusing an application for transfer of a case from one Court to another. The discretion is of the Court, and of a superior Court at that. The discretion must be exercised judicially. That means that in ordering or refusing to order a transfer, the Court must be guided by its sense of justice, but on objective considerations and not subjectively. A transfer may be ordered if the Court finds it just and proper. What is just and proper depends, of course, on the facts and circumstances of each case, and, if I may add, the good sense of the Judge. There cannot be any hard and fast rules, and that explains the conflict of authorities, if one were to read them, for determining whether a particular case was a fit one or not for ordering a transfer. The AIR Commentaries on the Code of Civil Procedure, IX Edn. Vol. I. Pages 567 to 570, Note 13, under Section 24, are full of them. I do not propose to read them in this case, for one cannot be too hidebound by authorities in a matter like this. The simple rule, which I think is the true rule, and must be followed by a Judge before ordering a transfer is to ask himself the question, of course, after settling the facts, whether on the facts and in the circumstances of the case a transfer of the case from one Court to another would advance justice, by making it more conveniently and easily available to the parties, or by giving the parties a greater confidence and sense of satisfaction in its impartial administration. The rule is like all such rules, neither exhaustive nor hard and fast. It is flexible."

5. Hon"ble the Supreme Court in the case Vivekananda Nidhi and others Vs. Asheema Goswami (Smt),(2000) 10 Supreme Court Cases, 23 while interpreting the provisions as provided under Section 24 CPC. held that before deciding the application under said section it is mandatory to issue a notice to the parties and after hearing the parties appropriate order shall be passed with regard to transfer.

6. Further, the ground which has been taken by opposite party no.1 regarding the transfer application in the matter in question is in accordance to the law as laid down by this Court in the Case of Masroor Vs. District Judge, Shahjahanpur and others, 2002 (93) RD 563, Zohra Begum (Smt.) and others Vs. VIIth ADJ Bareilly and another decided on 20 April, 2000 and M/s Moder hardwares and others Vs. prescribed Authority, Dehradun and others decided on July,26,1990.

7. For the foregoing reasons, the writ petition is dismissed.