

(1992) 09 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 2963-CII of 1992

Indian Overseas Bank

APPELLANT

Vs

Bagrian Shoes Ltd. and Others

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 24

Citation : (1993) 103 PLR 301

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : O.P. Goyal and Parmod Goel, for the Appellant; S.C. Nagpal, for the Respondent No. 1 and Hemant Kumar, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This petition has been filed by the plaintiff-petitioner for transfer of the case pending in the Court of Sub Judge Ist Class, Malerkotla, on the ground that both the plaintiff as well as the defendants reside and work for gain at Chandigarh. All the documents and evidence to be adduced by the parties is available at Chandigarh. Even the record of the bank which is quite voluminous is at the head office at Chandigarh. Since the factory of the defendants is closed for a number of years, the balance of convenience of both the parties is that the suit be transferred from the court at Malerkotla to the Court of competent jurisdiction at Chandigarh.

2. Pursuant to the notice issued to the respondents, they have put in appearance and respondent Nos. 1 and 4 have filed reply to the same challenging the various contentions made in the application for getting the case transferred to the Court of competent jurisdiction at Chandigarh- Respondent No. 1, in addition to reply on merits, has raised preliminary objection to the effect that the suit has been filed seeking sale of the mortgaged property, immovable property belonging to the defendants-which are situate within the territorial jurisdiction of the Court of

Senior Sub Judge at Malerkotla. As the suit of this nature is to be filed where the suit property is situate and mortgaged, such a suit cannot be transferred in view of Sections 16 and 17 of the Code of Civil Procedure. Even otherwise; the case does not fall within the purview of Section 24 of the CPC and, lastly, that the suit was filed sometime in the month of October, 1991, pursuance to which the parties have put in appearance, engaged senior counsels to contest the suit and incurred other expenses and thus there is no ground for transferring the case from the Court at Malerkotla.

3. The learned counsel for the petitioner in support of his case laid much emphasis on the ground that the bank has a registered office at Chandigarh ; that various documents executed by the defendants at the time of grant of loan too were executed at Chandigarh, that both the parties reside and work at Chandigarh. In addition to these, the counsel highlighted that evidence in the case has yet to be recorded, so keeping in view the fact that voluminous record is to be produced by the plaintiff for which various functionaries will have to be examined, trial at Chandigarh would cut down the avoidable expenses of various witnesses who have to be taken from Chandigarh to Malerkotla and back coupled with voluminous original record. Even otherwise, the respondents are not liable to suffer on any count. In support of his contention, the counsel relied upon the judgment in case reported as Sri Pamban Kumaragurubara Swami Temple Vs. K. Subramanya Mudaliar, Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swami Swaroopanand Saraswati Vs. Ramji Tripathi and Others, and Jyotsna Raje Vs. Jagpal Singh, . Counsels for the respondents, however, on the other hand, have strenuously opposed the pleas raised by the counsel for the petitioner. Mr. S.C. Nagpal, counsel for respondent No. 1, specifically highlighted the fact that the suit in the present instance was filed at Malerkotla wherein parties put in appearance in pursuance to the notice of the Court as well as engaged senior counsel to conduct proceedings on their behalf. This way the defendants have already incurred huge expenditure by engaging counsel/senior counsels. Not only this, the respondents ordinarily reside at village Bagrian where the factory is situate. The whole record of the defendants is at the factory premises and in case this prayer for transfer is accepted, it would put the respondents to great inconvenience and expenditure. In support of his above contention, the counsel relied upon the judgment in case reported as Oriental Bank of Commerce Ltd. Vs. Pashok Tea Co. Ltd. and Others, .

4. I have heard learned counsels for the parties and have perused the judgments cited by them. Section 24 of the CPC gives powers to this Court to transfer any suit, appeal or other proceedings pending before any Court subordinate to it to any other Court of competent jurisdiction. However, while deciding the application for transfer of the case, the Court has to keep in mind the convenience of the parties i.e. convenience of both the parties and not one of them. Much emphasis has been laid by the counsel for the petitioner with regard to the voluminous nature of the documentary evidence which has to be adduced by the plaintiff in support of its case. The botheration of the bank officials to go

from Chardigarh to Malerkotla and back and prevailing law and order condition in Punjab highlighted by the counsel is superfluous in the context of the dispute. The learned counsel has simply glossed over the provision contained in sections 16 and 17 of the Code of Civil Procedure. u/s 16(d) of the CPC the suit for the determination of any right or any interest in immovable property is to be instituted in the Court within the local limits of whose jurisdiction the property is situate. The fact that the suit in the present case is by way of sale of the mortgaged property which admittedly situate within the territorial jurisdiction of the Court of Senior Sub Judge at Malerkotla, the present application is, in fact, an attempt to get the case transferred beyond the territorial jurisdiction of the Court at Malerkotla which otherwise section 16 of the CPC specifically prohibits. In somewhat identical position, the matter came up for consideration in Oriental Bank of Commerce's case (supra) wherein the Court declined the prayer for transfer of the case pending in a Court at Darjeeling to the Court of competent jurisdiction at Calcutta. The Court observed as under :-

"The fact that all the defendants in the suit reside and carry on business within the original jurisdiction of this Court by itself cannot decide the matter. The records of the borrower may be within the jurisdiction of this Court but that by itself is not sufficient. It has to be remembered that the suit has been filed by the plaintiff bank itself in Darjeeling. It has chosen a forum. It has not merely relied on a Court, personal decree but has asked for a mortgage decree. Further it may not be necessary to carry all the records from the Bank's Calcutta office to Darjeeling Court in view of the provisions of Bankers' Books Evidence Act. This is also not a pure simple suit for money lent and advance. From the nature of the defence sought to be set up, it is quite clear that it cannot be said that the respondents will not be required to produce any evidence from its tea gardens."

The various judgments cited by the counsel for the petitioner are, in fact, decisions on facts of a particular case and as such have no bearing on the points in controversy. In Jyotsna Raje's case (supra), the Court was examining the transfer of case on the ground that the petitioner apprehended that she would not get impartial treatment at the place where petition for restitution of conjugal rights was filed by the respondent as the other party being a senior government officer wielded influence on account of the status. In this case, the Court came to the conclusion that there was no basis to come to the conclusion that the petitioner would not get fair and impartial treatment in the Court and so dismissed the petition. In Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swami Swaroopanand Saraswati's case (supra), the Court observed that the plaintiff, as arbiter litis, has a right to choose his own forum and that right should not be interfered with except on very strong grounds. The search should be for justice and the Court must be satisfied that justice could more likely be done between the parties by refusing to allow plaintiff to continue his suit in the forum of his choice. The onus of establishing sufficient grounds for the transfer lies heavily on the applicant. Preponderance of balance of convenience is of prime consideration for transfer of suit. However, this proposition of law which is

otherwise also settled by various judicial pronouncements is not a matter in dispute. Similarly, the ratio in Sri Pamban Kumaragurubara Swarni Temple's case (supra) is that the Court has to keep in mind the convenience of the parties while ordering transfer of the case from one Court to another. The fact that the prayer made by the petitioner has been contested by the respondents, knocks out the emphatic assertion of the petitioner that transfer of the case from Malerkotla to Chandigarh would be convenient to both the contending parties. In the absence of this, other grounds urged by the petitioner i.e. voluminous nature of the documents to be carried from Chandigarh to Malerkotla and witnesses to prove the same, can hardly be taken to be a circumstance of the case. Resultantly, this civil miscellaneous is wholly without any merit and the same is accordingly dismissed.