

(1995) 05 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : OMP No. 174 of 1995 in C.S. No. 112 of 1984

Kishori Lal

APPELLANT

Vs

Garud Dhawaj

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Himachal Pradesh Courts (Amendment) Act, 1995 — Section 21A
Himachal Pradesh Courts Act, 1976 — Section 10, 11

Citation : (1995) 2 ILR HP 1200

Hon'ble Judges : S.N. Phukan, C.J

Bench : Single Bench

Advocate : B.K. Malhotra, for the Appellant; Bhupinder Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, C.J.—This application has been filed by one of the Plaintiffs for recalling the order passed by the learned Single Judge in OMP 65 of 1995, arising out of C.S. 112 of 1984. By the said order, the Civil Suit, namely, C.S. No. 112 of 1984 was transferred to the files of the learned District Judge, Solan for disposal in accordance with law from the files of this Court.

2. According to the learned Counsel for the applicant, in view of Section 21A, as introduced by the Amending Act No. 1 of 1995 in the Himachal Pradesh Courts Act, 1976, only the Chief Justice can pass such transfer" order and, therefore, the above order is illegal and invalid. The said Section runs as follows:

21A Powers of the Chief Justice to transfer pending suits, appeals or proceedings to Subordinate Civil Courts. The Chief Justice of the High Court of Himachal Pradesh may transfer any suit, appeal or proceedings which is or are pending before the High Court of Himachal Pradesh immediately before the commencement of the Himachal Pradesh Courts (Amendment) Act, 1994 to such a Subordinate Civil Court in Himachal Pradesh which would have jurisdiction to

entertain such suit, appeal or proceedings, had such suit, appeal or proceedings been instituted or filed for the first time after such commencement.

3. After the said amendment was made, the then Chief Justice of this Court, exercising the powers under Sections 10 and 11 of the H.P. Courts Act, 1976, issued a Notification on 21st of February, 1995, fixing the pecuniary jurisdiction of District Judges/Addl. District Judges, Senior Sub Judges/other Subordinate Judges. There is no dispute that the present suit comes within the pecuniary jurisdiction of the learned District Judge, in view of the amendment made and also the Notification issued.

4. From the application, it appears that against this order, a SLP was moved before the Apex Court which was dismissed. It has been stated in the application that according to the learned Counsel for the applicant, the Hon"ble Bench of the Apex Court hearing the matter had orally observed:

that since it was purely an administrative jurisdiction, it was for the Chief Justice of the High Court to decide the matter and, therefore, they would not interfere in the matter.

5. Admittedly, the SLP as stated in the present petition was dismissed but there is no judicial order regarding the observations of the learned Counsel, as stated above. Therefore, the present application has been decided on its own merit.

6. Section 21A of the Amending(Amended) Act gives powers to the Chief Justice to transfer pending suits, appeals or proceedings etc. to subordinate Courts but, in my considered opinion, a judicial order is also necessary. Accordingly, direction was given by me in my capacity as the Chief Justice to list all pending suits, appeals and proceedings before the appropriate Bench keeping in view the notification issued by the then Chief Justice on 21st of February, 1995. Therefore, the present civil suit was also listed before the learned single Judge of this Court who passed the appropriate orders of transfer.

7. That apart, in view of the amendments made and notification issued, the subordinate courts have jurisdiction to try such suits. Therefore, by exercising powers u/s 24 of the Code of Civil Procedure, if a civil suit etc. comes before the Court on the judicial side, it can be transferred by taking suo-motu action. If this is so transferred, the parties in dispute will have one more chance of appeal as of right. It may be added that as the pecuniary jurisdiction has been increased in respect of subordinate judiciary, it will not be proper for the High Court to try the suits.

8. Though in the impugned order, no specific reference is made to Section 24 of the Code of Civil Procedure, it would not vitiate the order of transfer in question. I hold that the learned Judge was within his jurisdiction to transfer the suit to the learned District Judge, Solan, in the circumstances stated above.

9. For the reasons stated above, I refuse to interfere in the matter either in my judicial or administrative capacity.

10. The application is dismissed.

11. Costs on parties.