
(2007) 05 CAL CK 0041
In the Calcutta High Court
Case No : C.O. No. 773 of 2007

Nirmalendu Kamilya and Others

APPELLANT

Vs

Ananta Kumar Payra and Others

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 24(1)

Citation : (2008) 3 CHN 782

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : P.K. Samanta and P. Bishal, for the Appellant;

Judgement

S.P. Talukdar, J.—The petitioners by filing the instant application u/s 24 of the CPC have sought for transfer of the Title Appeal No. 4 of 2006 from the file of the learned Court of Additional District Judge, Contai, Purba Medinipore to the Hon'ble High Court.

2. The backdrop of the present case may briefly stated as follows.

3. The opposite party Nos. 1 to 7 filed the Title Suit No. 18 of 1974 in the learned Court of Subordinate Judge at Medinipore and Title Suit No. 53 of 1966 before the learned 2nd Court of Munsif at Contai against the petitioners. The petitioners again filed Title Suit No. 17 of 1974 before the learned 2nd Court of Subordinate Judge, Medinipore against the opposite parties.

4. The above-mentioned suits were transferred to the learned 2nd Court of Assistant District Judge, Contai and the same were re-numbered as Title Suit No. 5 of 1989 (previously Title Suit No. 18 of 1974), Title Suit No. 56 of 1988 (previously Title Suit No. 53 of 1966) and Title Suit No. 17 of 1990 (previously 17 of 1974) respectively. The valuations of the Title Suit No. 56 of 1988 and Title suit No. 5 of 1989 were Rs. 854/- and Rs. 30,000/- respectively that of Title Suit No. 17 of 1990 was Rs. 80,000/-.

5. The aforesaid Title Suits were heard analogously by the learned 2nd Court of Assistant District Judge, Contai and were disposed of by a common judgement on 8th October, 1993. Learned Court by the said judgement decreed the Title Suit No. 5 of 1989 filed by the opposite party Nos. 1 to 7, dismissed the Title Suit No. 56 of 1988 filed by the same opposite parties and dismissed the Title Suit No. 17 of 1990 filed by the petitioners herein.

6. The petitioners preferred an appeal being Title Appeal No. 150 of 1994 against the said common judgement and decree passed in Title Suit No. 5 of 1989 in the Court of learned District Judge, Purba Medinipore. The said suit was valued at less than Rs. 60,000/-. They also preferred an appeal against the judgement and decree passed in Title Suit No. 17 of 1990 valued at Rs. 80,000/- before the High Court which was registered as F.A. 484 of 2003. The said appeal is pending before the High Court for disposal.

7. The Title Appeal No. 150 of 1994 which was filed by the petitioners before the learned Court of District Judge, Medinipore against the said judgement and decree dated 8th October, 1993 was transferred for the file of learned District Judge at Tamluk, Purba Medinipore. The said Title Appeal No. 150 of 1994 was then re-numbered as Title Appeal No. 188 of 2004. Then again, it was transferred to the learned Court of Additional District Judge at Contai and there it was numbered as Title Appeal No. 4 of 2006.

8. Both the abovementioned Title Suits being Title Suit No. 5 of 1989 and Title Suit No. 17 of 1990 were heard analogously and were disposed of by a common judgement. Above mentioned Title Appeal No. 4 of 2006 now pending before the learned Court of Additional District Judge, Contai needs to be transferred to the High Court for hearing analogously with the said appeal for the sake of convenience of the parties and prevent/multiplicity of proceedings as well as to avoid possibility of conflicting decisions.

9. The said Title Appeal No. 4 of 2006 was fixed before the learned Division Bench of the High Court having determination to hear the first appeal and applications relating thereto. After hearing the submissions, Hon"ble High Court observed that the said application for transfer of the appeal in question is required to be moved before the learned Single Bench having determination to hear applications u/s 24 of the Code of Civil Procedure. The learned Division Bench of this Court granted liberty to the petitioners to withdraw the said applications with the observation that the merit of the same was not considered by Their Lordships.

10. In such circumstances, petitioners approached this Court with an application u/s 24 of the C.P. Code whereby prayer has been made for transfer of the Title Appeal No, 4 of 2006 now pending before the learned Court of Additional District Judge at Contai to the High Court for analogous hearing with F.A. No. 484 of 2003.

11. Mr. Samanta appearing as learned Counsel for the petitioners submits that in

the backdrop of the present case, it is necessary that the two appeals, as referred to, are heard by the same Court. Reference was made to the factual backdrop of the cases under reference. Mr. Samanta submits that since the appeal which is now pending before the learned Division Bench of this Court is already listed for hearing, it is necessary that the other appeal pending before the learned Court of Additional District Judge, Contai, be withdrawn for its analogous hearing with the first appeal pending before the learned Division Bench.

12. Mr. Samanta refers to the decision in the case of Engineering Investments P. Ltd. Vs. Bharath Heavy Electricals Ltd., Madras and Another, , in the said case, an appeal was pending before the Principal Judge, City Civil Court. Identical issues relating to same transactions between the same parties were involved in the suit filed in the Original Side of the High Court. To avoid possibility of conflicting decisions and prevent abuse of the process, there is need for hearing of the two appeals before the same Court. The learned Single Bench in connection with the said case justified attracting u/s 24 of the C.P. Code.

13. The learned Court in connection with the said case also relied upon the decision in the case of Srirangam Municipality v. Palaniswami Pillai reported in 1951(1) Mad LJ 281. The relevant observations made in connection with the said case may be re-produced as follows:

According to us, the correct position is that, an application u/s 24 CPC, should be made to this Court as such, in the same manner as it might be made to the District Court, and such an application can be validly heard and disposed of by any Judge of this Court deputed by the Chief Justice to hear such applications.

The learned Court also derived inspiration from the decision in the case of Purna Chandra Mahanty and Others Vs. Samanta Radhaprasana Das, wherein it was held that "where there are two suits which raise certain common questions of fact and law, having a substantial bearing on the decision of each of the cases. It is obviously desirable that they should be tried at the same place and by the same Judge. This course is necessary in order to avoid multiplicity in the trial of the same issues and conflict of decisions, when such a situation arises, the Court has to consider the balance of convenience, having regard to all the circumstances of the two suits".

14. In the case of N. Ram Mohan Vs. J. Kasthuri, , it was held that High Court can transfer a suit from one Subordinate Court to the High Court in general and later on, may be taken up by Original Side of this Court for trial according to law.

15. Before proceeding it is perhaps necessary to re-produce Section 24 of the C.P. Code which is set out as follows:

24. General power of transfer and withdrawal.- 1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or

the District Court may at any stage-

a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

i) try or dispose of the same; or

ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

3) For the purposes of this section-

a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

b) "Proceeding" includes a proceeding for the execution of a decree or order....

16. In the factual backdrop of the present controversy, what is relevant is Section 24(1)(b)(ii) of the said Code.

17. True, there is no scope for controversy so far this Court's power to withdraw an appeal pending before the Subordinate Court is concerned. Question arises as to whether this Single Bench can thereafter simply transfer it to the Division Bench. The answer is an emphatic "no". So, what is to be done after it is so withdrawn?

18. Mr. Samanta, learned Counsel for the petitioners, answers to this by saying that after its withdrawal, High Court can very well dispose it of. Argument advanced in this regard appears to be quite convincing. It is the prerogative of the Hon'ble the Chief Justice to fix up determination. Distribution of cases/files, more or less, is an administrative function and if is the prerogative of the Hon'ble the Chief Justice. There is no reason as to why an appeal, so withdrawn, cannot be thereafter assigned to the Division Bench for its disposal - if interest of justice so demands.

19. Having regard to the facts and circumstances of the present case, it can very well be said that to avoid multiplicity of proceedings and conflicting decisions as well as for the sake of convenience, there is need for disposal of the appeal, so

withdrawn, along with the appeal now pending before the learned Division Bench.

20. In such circumstances, the present case being C.O. No. 773 of 2007 arising out of an application u/s 24 of the CPC be disposed of with the following directions:

(i) The appeal being Title Appeal No. 4 of 2006 now pending before the learned Additional District Judge at Contai in the District of Purba Medinipore be withdrawn to the file of the High Court.

(ii) Thereafter, it is for the petitioners to take appropriate step for its hearing along with the first appeal which is now reportedly pending before the learned Division Bench.

21. There will, however, be no order, as to costs.

22. Urgent xerox certified copy of this order, if applied for, be made available to the parties expeditiously.