

(2014) 11 AHC CK 0094
In the Allahabad High Court
Case No : Writ-A. No. 58057 of 2014

Shivay Hotel Pvt. Ltd.

APPELLANT

Vs

Amar Nath Singh and Others

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Family Courts Act, 1984 — Section 7(1), 8

Citation : (2015) 108 ALR 514

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : A.P. Tewari and S.S. Tripathi, Advocates for the Appellant

Judgement

Ran Vijai Singh, J.—Heard Sri A.P. Tewari, learned Counsel for the petitioner. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 26.8.2014 passed by the District Judge, Gorakhpur by which the petitioner's transfer application, for transferring the Small Causes Case No. 15 of 2008, M/s. Shivay Hotel v. Vikash Singh, from the Court of Judge, Small Causes Court to any other Court of the competent jurisdiction has been rejected.

2. Sri Tiwari submits that the learned District Judge has erred in rejecting the petitioner's application as once it was stated on oath that the tenant is the distant relative of the Judge, Small Cause Court, it was incumbent upon the learned District Judge to seek comment of the Judge concerned before whom the case was pending and only thereafter any order could be passed. In his submissions, once the suspicion has crept in mind of litigant that he will not be able to get impartial justice from the Court concerned, then in that eventuality the matter was to be heard in detail and only thereafter, any decision on the transfer application could be taken. In his submissions, in the event of suspicion of injustice, from the Court, in the mind of litigant, the proper course was to allow the transfer application as it is settled that Justice is not only done but manifestly appears to have been done. In support of his submissions, he has

placed reliance upon the judgment of this Court in Smt. Geeta Srivastava Vs. A.K. Saxena, Judge Family Court and Others, .

3. I have heard learned Counsel for the petitioner and perused the impugned order passed by the Court below.

4. The facts giving rise to this case are that the petitioner-landlord has filed Suit No. 15 of 2008 before the Judge Small Causes Court against the respondents seeking their eviction on the ground of default in payment of rent, damages for use and occupation and taxes. In the aforesaid suit, in the year 2014, to be more specific date 14.5.2014, the petitioner has filed an application for transferring the case from the Court of Judge, Small Causes Court to any other Court having same jurisdiction on the allegation that the tenant's shop is adjacent to the Shivay Hotel reception and his one employee has heard that opposite party Sri Vikas Singh was talking the main employee of the shop that the case had been adjourned on the application of the otherside, otherwise it should have been decided in his favour as the learned Judge is his distant relative. On this allegation, it was stated that the applicant-petitioner has no hope of justice from the Judge concerned.

5. The transfer application was rejected by the District Judge vide order dated 14.5.2014 on the ground that from the perusal of the application it transpired that name of the employee who heard this allegation was differently mentioned in the affidavit but later on by using whitener different name was written. The learned District Judge has found that the allegations are concocted and hypothetical and therefore rejected the application. Challenging the aforesaid order, the petitioner has filed Writ A No. 30846 of 2014, M/s. Shivay Hotel Pvt. Ltd. v. Sri Amar Nath Singh and another. The aforesaid writ petition was dismissed by this Court on 29.5.2014 with the following observation:--

1. Heard learned Counsel for petitioner and perused the record.

2. Transfer Application of the petitioner has been rejected by District Judge, Gorakhpur for certain deficiencies in the application. Counsel for petitioner submitted that he could have been permitted to file a fresh application instead of dismissing it.

3. Be that as it may, there is no restriction before the petitioner to move another application, if the circumstances so justify and not only for casual reasons. The writ petition is thoroughly misconceived.

4. Dismissed.

6. It is thereafter the petitioner has filed present application on 14.7.2014 on the same allegation. This application has also been rejected. Before the District Judge, it was argued that earlier transfer application was rejected on technical ground as due to clerical mistake, certain discrepancy has crept in the name of employee, through whom information was received. The learned Judge has observed that earlier order was not passed on the basis of clerical mistake but it

was passed after scrutinizing the fact of the case in detail on merit and that order was not found to be faulty by the High Court.

7. Sri Tripathi has placed reliance upon the judgment of this Court in Geeta Srivastava (supra). The particular attention has been drawn towards para 4 of the judgment, which is reproduced hereinunder:

"4. Besides above, the allegations made against the Presiding Officer assassinating his character and conduct in relation to his approach towards petitioner's cases pending before him, being wholly scandalous and frivolous, there is one big question, which may be noticed that after so much scandalisation of officer's character would it be justifiable to keep the cases in that Court over which he is presiding? The answer would be in the negative. May be that the Presiding Officer, who has put in so much of service in the judicial wing deciding the cases, must have acquired enough will power to sustain his cool while finally deciding the matter and delivering the judgment. But it apparently does not appear just that the cases, which are before him, should any further remain there waiting for his decision. It would be always just and proper that the cases should be transferred to some other Court for decision, which may also appear to be fair and unprejudiced. The justice done in a particular matter between the parties ought to appear that the justice in actuality, has been done. Therefore, in pursuance to this if the cases are transferred from the Court of present Principal Judge, Family Court to any other Court, it would be more justifiable. In this context, submission was made from the side of the Counsel appearing for the opposite parties that there being only one designated Family Court in the district, the other Courts functioning there are not supposed to be Competent Courts for disposal of those matters in the face of provisions of section 8 of the Family Courts Act. The provision excludes the Jurisdiction of other Courts in the district from exercising jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to section 7(1) of the said Act."

8. The facts involved in Geeta Srivastava's case was entirely different from the facts involved in this case as there the transfer application was filed looking into the earlier behavior of the Judge in other proceeding where various allegations were made by the applicant seeking transfer and there the Court made observation as mentioned in para 4 of the judgment rendered in the case of Geeta Srivastava (supra). Here in this case, this is the second application in the same proceeding on the same allegations on which earlier transfer application was rejected. Otherwise also, transfer application as well as supporting affidavit is based on the information furnished by the employee of the applicant, there is no averment either in the application or supporting affidavit that after receipt of information by the employee, the applicant had ever made any effort to find out the truthfulness of the information furnished by his employee as to whether the opposite parties are really relative of the Presiding Officer or not, therefore on such allegations, there was no occasion for the learned District Judge to seek

comment of the Court concerned, coupled with fact that earlier transfer application on the same ground was rejected and this Court has dismissed the writ petition filed against that order treating it to be filed on totally misconceived ground.

9. Sri Tripathi further contends that while adjourning the case, cost of Rs. 4000/- has been imposed upon the petitioner from which hostility of the Court concerned reflects. The cost may be excessive but looking into the conduct of the petitioner that at the stage of final hearing, he has changed lawyer, who filed his vakalatnama on 26.4.2014, on which 3rd May, 2014 was fixed for argument. On that date, adjournment was sought on behalf of the petitioner on the ground of illness of wife of the petitioner and the date was fixed for 15.5.2014, again adjournment was sought. The earlier transfer application was filed on 14.5.2014, which was rejected by learned District Judge on 14.5.2014 itself, therefore looking into the conduct of the petitioner, I am of the opinion that suspicion of the petitioner that he will not be able to get justice from the Court concerned is ill-founded. The writ petition lacks merit and it is hereby dismissed.