

(2002) 09 AHC CK 0239

In the Allahabad High Court

Case No : C.M.C. No's. 53 of 2000 and 41 of 2001

Smt. Aliya Begum

APPELLANT

Vs

Smt. Gausiya Khan and Others

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2003) 1 DMC 808

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : U.S. Sahai, for the Appellant; N.K. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Bhanwar Singh, J.—The parties being common, both these cases are taken up together for disposal.

2. By virtue of filing C.M.C. No. 41 of 2001, Smt. Aliya Begum, the mother-in-law of opposite party No. 1, Smt. Gausiya Khan has prayed for transfer of Execution Case No. 1 of 2000, pending in the Court of Additional District Judge (Ayodhya Prakaran), Lucknow to any other Court in any district.

3. By means of the other C.M.C. No. 53 of 2000, the aforesaid petitioner Smt. Aliya Begum prays for transfer of Regular Suit Nos. 47 of 1989, 233 of 1988, 270 of 1989, 192 of 1996, 180 of 1996 along with Execution Case No. 1 of 2000, pending in the Court of Additional District Judge (Ayodhya Prakaran), Lucknow to any other neighbouring district for trial and disposal.

4. The factual matrix of both the transfer petitions is common and the same can be narrated as below :

The opposite parties Smt. Gausiya Khan and others filed Regular Suit No. 47 of 1989 in the Court of Civil Judge, Unnao against the petitioner of this case praying for permanent injunction against the defendants of the said suit restraining them

from transferring the properties described in Schedules A, B and C of the plaint. The plaintiffs also claimed recovery of the amount of income falling to their share and also for rendition of accounts. A relief for declaration that the plaintiffs were exclusive owners of the properties of the three Schedules C, D and E of the plaint was also sought for. During the pendency of the suit, the plaintiffs of the said case moved for temporary injunction and also for appointment of Receiver. An application for maintenance allowance was also filed. The petitioner who was one of the defendants filed her objections against all the applications. However, the District Judge allowed the interim maintenance to the plaintiffs/ opposite parties but on being challenged, its operation was stayed by the High Court. On hearing both the parties, the High Court dismissed the writ petition. The dismissal order was challenged by way of SLP before the Supreme Court. In the meantime, the plaintiffs moved execution application for recovery of the maintenance amount as awarded by the Trial Court. The petitioner has moved this petition for a limited purpose of transferring the said execution matter to any other Court for the reason that the petitioner's prayer for adjournment was rejected on 22.5.2001 by the executing Court. In case, the proceedings in the execution case are not stayed, the property of the deponent will be sold at throw-away price as the executing Court is bent upon for execution of the maintenance order without deciding the petitioner's objections filed by her u/s 47, C.P.C. Earlier, the petitioner's adjournment application moved on September 16, 2000 for adjournment of the proceeding was granted with Rs. 500/- as costs and again on 17.11.2000, exemplary costs of Rs. 1,000/- were imposed. The petitioner's application for adjournment moved on November 25, 2000 was allowed with a fantastic cost of Rs. 4,000/-. On the other hand, when the Counsel for the opposite parties had prayed for postponement of the hearing in Suit No. 47 of 1989, the prayer was granted with a cost of Rs. 400/- only. It is on the basis of this discriminatory attitude of the executing Court that the petitioner has serious apprehension and reasons to believe that she will not get justice at the hands of the present Presiding Officer dealing with the execution matter. In these circumstances, the petitioner was obliged to file this transfer petition for transfer of Execution Petition No. 1 of 2000 from the Court of Additional District Judge (Ayodhya Prakaran) to some other Court in any other adjoining district.

5. Almost similar are the facts of the Transfer Petition No. 53 of 2000 filed by Srimati Aliya Begum earlier on 6.9.2000 praying for transfer of Regular Suit Nos. 47 of 1989, 233 of 1988, 270 of 1989, 192 of 1996, 180 of 1996 and also the Execution Case No. 1 of 2000 from the Court of Additional District Judge (Ayodhya Prakaran), Lucknow to any other Court in any neighbouring district for trial and disposal.

6. Regular Suit No. 47 of 1989 was filed by Smt. Gausiya Khan and her two sons and a daughter (all featuring as opposite parties 1 to 4) seeking relief for permanent injunction restraining the petitioner and other defendants from transferring the properties described in Schedules A, B and C of the plaint and for rendition of accounts relating to the income of the said properties. Some

other prayers were also made which are not very relevant for the present point of view.

7. Smt. Rasheeda Parveen, alleged to be the other widow of Mohd. Shafiq Khan, filed a Regular Suit No. 270 of 1987 seeking the same reliefs as indicated above. Regular Suit No. 233 of 1988 was filed for cancellation of sale-deed dated 11.3.1988 purported to have been executed by Mohammad Rafiq Khan in favour of Mohd. Shafiq Khan.

8. According to the applicant, the opposite parties 1 to 4 moved an interim application in their Regular Suit No. 47 of 1989 seeking maintenance amount. Although the said application was opposed by the petitioner, yet the District Judge, Unnao where all these suits were earlier pending, allowed the said application vide order dated 24.11.1993. The opposite parties 1 to 7 thereafter became more interested in getting the order of maintenance executed and with that intention started losing interest in proceeding with the hearing of the regular suits. It is noteworthy that the High Court on being approached by the petitioner transferred all these cases to Lucknow and it is how that all the cases including the execution case are pending in the Court of Addl. District Judge (Ayodhya Prakaran), Lucknow. When the petitioner learnt about the execution case being proceeded with by the present Presiding Officer, she requested for disposal of her objections filed u/s 47, C.P.C. before proceeding further as required by law. However, the petitioner was not given any opportunity either to lead evidence or make her submissions in support of the objections. Feeling aggrieved of the lower Court's inaction in the matter and partisan attitude being adopted, the petitioner filed Writ Petition No. 2045 (M/S) of 2000 challenging the order of the executing Court. In spite of the text that the Presiding Officer of the executing Court was informed about the writ petition having been filed before the High Court, he proceeded with the execution proceedings and this created an apprehension in the mind of the petitioner that she would not get justice from the said Court. Her application seeking fifteen days' time to enable her to move transfer application before the competent Court was rejected. It is in these circumstances that the petitioner has serious apprehension of her personal properties being attached and sold by the executing Court and this will cause manifest and substantial injury to her. Apart that, the petitioner is 65 years of age and, as such, she being old person comes across lot of inconvenience and discomfort while coming to Lucknow. The petitioner, therefore, prays for transfer of all the aforesaid suits to any other Court in some other neighbouring district.

9. The opposite parties 1 to 4 are the main contestants of both the transfer applications. They have opposed the transfer application mainly on the ground that it has been moved maliciously and mischievously by Smt. Aliya Begum with a view to harass the answering opposite parties and prevent them from deriving the advantage of the order regarding payment of maintenance money. Smt. Gausiya Khan filed her counter affidavit that her husband Mohd. Shafiq Khan died on August 7, 1988 on account of heart attack while he was on Haj

Pilgrimage. When she came back after performing the last rites of her husband, she was not allowed to enter the house by her mother-in-law, the petitioner. But asserting her right to stay in the house, she managed her entry in the house of her husband. The petitioner grabbed all the assets including seven vehicles belonging to late Mohd. Shafiq Khan besides his share in the firm M/s. Hindustan Transport Company. As a consequence, the deponent was obliged to file a Regular Suit No. 47 of 1989 in the Court of Civil Judge, Unnao for accounting and declaration and also permanent injunction. The said suit was subsequently transferred to the Court of District Judge, Unnao. Smt. Aliya Begum also filed a Suit No. 233 of 1988 in the Court of Civil Judge, Unnao and she set up one Rasheeda Parveen, opposite party No. 5 claiming herself to be the second wife of Mohd. Shafiq Khan and she also instituted a misconceived Suit No. 270 of 1989 in the same Court. Rasheeda Parveen was, in fact, a creation of the petitioner and her sons and she was, in fact, used to nullify the orders passed in different cases in favour of the answering opposite parties. This Court, vide its order dated 18.11.1996 passed in Civil Misc. Case No. 12 of 1996, Transferred Suit No. 47 of 1989 and the Execution Case No. 1 of 1994 from the Court of District Judge, Unnao to the Court of District Judge, Lucknow. Subsequently, these cases were transferred to the Court of Addl. District Judge (Ayodhya Prakaran), Lucknow from where the petitioner has now sought them to be transferred. The SLP filed against the transfer order was dismissed. Further, this Court vide its order of August 17, 1998 passed in Civil Misc. Case No. 17 of 1997 and certain other connected matters Transferred Suit Nos. 233 of 1988 and 270 of 1989 from the Court of District Judge, Unnao to the Court of District Judge, Lucknow. Thereafter, a Suit No. 192 of 1996 was got instituted by the petitioner and her children through their tool one Ghulam Sarvar Khan, opposite party No. 17 against Smt. Gausia Khan and others and in due course, the said suit was also transferred to the Court of District Judge, Lucknow by this Court vide its orders passed in Civil Misc. Case Nos. 12 of 1996, 13 of 1997 and 14 of 1997. The petitioner and her children then got another Regular Suit No. 180 of 1996 instituted by Rasheeda Parveen, the alleged second wife of Mohd. Shafiq Khan. The sole purpose of getting all these suits filed was to create a pressure upon the deponent and her children so that they could relinquish their claim in the properties of Mohd. Shafiq Khan. Subsequently, the Regular Suit Nos. 180 of 1986 and 192 of 1996 were also transferred to the Court of District Judge, Lucknow by this Court vide its order dated 13.8.1999 {Annexure C-4}.

10. It is relevant to mention that the petitioner earlier filed Transfer Application No. 53 of 2000 seeking identical relief for transfer of all the aforesaid cases and also Execution Case No. 1 of 2000 from the Court of Addl. District Judge (Ayodhya Prakaran), Lucknow. The said transfer application was filed on 5.9.2000 and in spite of the fact that the Execution Case No. 1 of 2000 pending in the Court of Additional District Judge (Ayodhya Prakaran) was also sought to be transferred in the said earlier execution petition, the petitioner with a view to harass the deponent Smt. Gausiya Khan and her children filed other Transfer

Application No. 41 of 2001 praying for transfer from the aforesaid Court the execution petition to some other Court in an adjoining district. As a matter of fact, this second transfer application is redundant as it appears to have been moved with an ulterior motive of causing delay in disposal of the matter. While dealing with the deponent's interim application for temporary injunction in Suit No. 47 of 1989, the Civil Judge, Unnao issued a restraint order but the High Court reversed the said order on technical ground. However, while disposing of the F.A.F.O. No. 34 of 1989, the Court directed the Civil Court to pass an order subject to its satisfaction, directing the petitioner Smt. Aliya Begum to pay some money in cash regularly to the deponent Smt. Gausiya Khan and her children. In pursuance of the said orders, the District Judge awarded the compensation/maintenance of Rs. 7,500/- per month to the deponent and her children from 1.5.1989 upto the date of delivery of seven vehicles. The Apex Court while dismissing the SLP No. 2367 of 1997 filed by the deponent and her children provided that the Trial Court can be approached for enhancement of the maintenance/ compensation. Smt. Gausiya Khan filed Execution Petition No. 1 of 2000 for payment of the maintenance money at the rate of Rs. 7,500/- per month. They have also moved the Trial Court for enhancement of the said sum but the said proceeding is still pending. However, in the meantime, the petitioner paid a sum of Rs. 3,15,000/- in terms of this Court's order dated 24.11.1999 but thereafter nothing has been paid to the deponent and her children, although the petitioner's average income from the seven vehicles is about Rs. 1,05,000/- per month. In fact, the petitioner has been playing all sorts of mischievous and mala fide tactics including filing of the present application for transfer without any basis or justification. Since there does not subsist any good ground for transfer of either the execution application or the other regular suits, both the transfer applications deserve to be dismissed with costs.

11. I have heard learned Counsel for both the parties and perused the record.

12. The petitioner has not denied the facts that all the suits and execution application as referred to above were transferred to the Court of District Judge, Lucknow from where they were sent to the Court of Additional District Judge (Ayodhya Prakaran) for trial and disposal in accordance with law. It has also been admitted by the petitioner that she filed earlier Transfer Application No. 53 of 2000 for transfer of all the cases from Lucknow to some other neighbouring district. However, no justification has been brought forward for filing the second application when the first transfer application was still pending. Since the parties were common, both these transfer applications, i.e. the Civil Misc. Case No. 53 of 2000 and Civil Misc. Case No. 41 of 2001 were taken together for disposal. Although, in the earlier transfer application, the prayer was for transfer of all the suits and execution case to a Court in the neighbouring district, yet a lame excuse for filing the other transfer application has been made as recited in para 10 of the Civil Misc. Case No. 41 of 2001. A fresh cause is said to have arisen and it was that the Trial Court, namely, the Court of Additional District Judge (Ayodhya Prakaran) was proceeding with the execution case without deciding the

objections u/s 47, C.P.C. filed by the petitioner. Yet one more ground was brought to the notice of the Court and it was that the Court below had awarded excessive adjournment costs thereby creating a serious apprehension in the petitioner's mind that she would not get justice at the hands of the Presiding Officer of the Court. Replying to the first ground pleaded by the petitioner, Smt. Gausiya Khan asserted in para 40 of her counter affidavit that such objections u/s 47, C.P.C. filed earlier had been dismissed by the Trial Court and as a matter of fact, no objections u/s 47 of the CPC were maintainable. In her rejoinder affidavit, Smt. Aliya Begum has not controverted the averments made by Smt. Gausiya Khan in para 40. It may, therefore, be conveniently inferred that the objections filed by the petitioner u/s 47, C.P.C. had once been decided and rejected. The petitioner, therefore, should not have any grievance if similar objections filed by the petitioner were heard and dismissed. Repetition of same kinds of pleas might not have enured any benefit to the petitioner. In this context, it would be relevant to refer to the order dated 22.5.2001 passed by the executing Court. A perusal of the said order (Annexure-1) of Civil Misc. Case No. 41 of 2001 would reveal that a day before the aforesaid order being passed, i.e. on May 21, 2001, the Trial Court heard the arguments of the Counsel for the judgment-debtor/petitioner Smt. Aliya Begum. Her Counsel has almost finished his arguments but he was to wind-up the same on the other day, i.e. on 22.5.2001. Instead of resuming his arguments on May 22, 2001, the petitioner's Counsel orally requested to defer the proceedings on the ground of a SLP being pending before the Supreme Court. What is significant to mention is that there is not an iota of substance in the petitioner's version that the Trial Court had proceeded to decide the execution petition without hearing the objections filed u/s 47, C.P.C. On May 21, 2001, the petitioner's Counsel Mr. Zahoor Ahmad made his submissions and almost finished his arguments but as said above, he made a request to conclude the same on the other day. The Trial Court accepted his request and adjourned the hearing to the following day. From these recitals of the Trial Court, the theory as propounded in para 12 of Smt. Aliya Begum's affidavit that the executing Court was bent upon to proceed with the execution case without hearing her Counsel and also without deciding objections u/s 47, C.P.C. appears to be manufactured. The detailed order dated 22.5.2001 is clearly indicative of the fact that the executing Court had accorded a patient hearing to the petitioner's Counsel who had very elaborately submitted his arguments. On the adjourned date of hearing, the petitioner's Counsel has not questioned that he was being deprived of a further audience either on the issue of objections u/s 47, C.P.C. or on any other point. He simply requested for adjournment of the hearing on the ground of a SLP being pending before the Supreme Court. If the petitioner-really intended the Court to take notice of the pendency of the appeal, a request should have come forward on May 21, 2001 itself but no such attempt was made on that day, instead the petitioner and her Counsel both were ready and willing to submit their arguments and it was in these circumstances that the executing Court had heard at length the submissions made by Mr. Zahoor Ahmad. On 22.5.2001, the petitioner or her Counsel had no grievance that the

executing Court had intended to proceed with the execution case without hearing them on their objections u/s 47, C.P.C.; otherwise they would have moved an application to this effect but no such application was filed. It thus shows that the petitioner has manufactured this ground of para 12 with a view to make it a basis for filing the present transfer application.

13. On the same analogy, it can be observed that the petitioner was not aggrieved of the Court's orders pertaining to the costs which have been termed to be an excessive. In this context, the petitioner has quoted three instances of the costs being awarded on her plea of adjournment. Initially, a sum of Rs. 500/- as costs was imposed on September 16, 2000 and when again the petitioner sought for postponement of the hearing on the adjourned date, i.e. on 17.11.2000, a cost of Rs. 1,000/- was levied. The petitioner admitted in para 14 of her affidavit that the opposite party No. 1 was also laden with adjournment cost of Rs. 400/- when she had prayed for adjournment of the hearing. Since the petitioner was termed to be ill-motivated to seek adjournment again and again with a view to deprive the opposite party No. 1 and her children of the income of the properties of Shafiq Khan and further since Smt. Gausiya Khan was craving for money to nourish her children, the imposition of cost in the increasing order would very well be said to have been justified. Similarly, the cost of Rs. 4,000/- imposed on 25.11.2000 with a view to curb the tendency of seeking adjournment time and again on the part of the petitioner was also justified. Always, the amount of costs has to be commensurate to the inconvenience to the parties; burden of lawyers' fees likely to be fastened upon other party; advantages and disadvantages of both the parties in the case of adjournment of hearing and of course; the assets involved in the dispute. Moreover, what is further very important to take note of is that if the petitioner was aggrieved of any one of the above three orders pertaining to award of the costs, she should have immediately sought for redressal of her grievance by approaching this Court for an appropriate relief. Therefore, by no stretch of reasoning, the Trial Court's order pertaining to the levy of costs can be termed to provide any base for moving the transfer applications. In other words, it may be observed that this ground is an after-thought idea having its basis on a manufactured plea.

14. Yet one more ground is pressed into service on behalf of the petitioner that she has to come from Unnao to participate in the proceedings at Lucknow and she being an old person is put to greater hardship besides inconvenience, particularly when the hearing stands adjourned. It is very difficult to take note of this ground or basis for transfer of the cases as all these cases were transferred to Lucknow in pursuance of prolonged hearing in several civil misc. cases by the High Court. Therefore, the validity of all such transfer orders cannot be allowed to be questioned for any reason.

15. Further, the application dated 2.9.2000 moved on behalf of the petitioner also had no substance as the apprehension of not getting justice was expressed without disclosing any reason. It was a bald averment to the effect that the way

in which the proceedings were being conducted had created a suspicion in the mind of the petitioner and, therefore, she was not likely to get justice at the hands of the Presiding Officer. As a matter of fact, the Trial Court is proceeding to dispose of the execution cases in accordance with the observations and directions of the High Court and the Supreme Court. By means of the order dated December 4, 2001, the Apex Court directed the Trial Court to expeditiously dispose of the trial at an early date, if practicable within six months. So if it was insisted by the parties upon the Court below that it should act for an early disposal of these cases, such order to the exclusion of the adjournment was absolutely justified. That apart, the petitioner has neither disclosed to the Trial Court nor submitted before this Court as to what irregular or illegal manner of the proceeding had been taken recourse to. In these circumstances, there was no plausible ground for the petitioner to have suffered from a mis-conceived apprehension and suspicion about the Presiding Officer of the Court being not impartial.

16. Thus, it appears that these transfer applications were filed by the petitioner not only without any basis but also with mala fide intention to harass the opposite parties 1 to 4 and deprive them of the fruits of the maintenance order and further to cause one impediment or the other in early decision of the disputes. The possibility, as alleged on behalf of Smt. Gausiya Khan, of the petitioner having played tricks so as to compel the former to toe her line cannot be ruled out. Indeed, such an act particularly when, as referred to above, there was a direction of the Apex Court to dispose of these matters as early as possible and if practicable within six months has to be censured. Such groundless and mala fide move tantamounts to obstruction of justice and certainly in such circumstances imposition of special costs will meet the ends of justice. The crux of the matter is that both the transfer applications being without merit deserve to be dismissed.

17. Accordingly, these applications are hereby dismissed with special cost of Rs. 10,000/- in addition to the cost of this litigation before the High Court. The stay orders are hereby discharged. The Trial Court is directed to proceed with the trial of all the cases and decide them as early as possible. The execution case shall be taken for disposal peremptorily.