
(1997) 12 AHC CK 0051
In the Allahabad High Court
Case No : Transfer Application No. 153 of 1993

Smt. Jyotsan Dixit

APPELLANT

Vs

Civil Judge, Khiri and others

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 22, 23, 24, 24, 25
Criminal Procedure Code, 1973 (CrPC) — Section 125, 407
Family Courts Act, 1984 — Section 10, 11, 12, 13, 14

Citation : (1999) 1 AWC 107 : (1998) 2 DMC 380

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : R.N. Singh and A.P. Sahi, for the Appellant; S.C. and R.K. Awasthi, for the Respondent

Final Decision : Allowed

Judgement

O.K. Seth, J.—By means of this application u/s 24 of the Code of Civil Procedure, the applicant Smt. Jyotsna Dixit, the wife, defendant in the Matrimonial suit, being Original Suit No. 115 of 1993, pending before the Court of Civil Judge, Khiri, had applied for transfer of the proceeding to the Court of Civil Judge, Varanasi. Admittedly both the Courts at Khiri and Varanasi have territorial jurisdiction and competent to try the suit. The opposite party No. 3 Sri Asitosh Dixit, husband of the plaintiff in the said suit represented by Sri R. K. Awasthi, opposes the said prayer on two fold grounds. His first contention was that the High Court of Judicature at Allahabad has no jurisdiction to entertain the application u/s 24 of the Code, since Khiri is within the Jurisdiction of Lucknow Bench of this Court, in view of decision in Was Naseeruddin's case. His second contention was that the defendant having last resided together at Khiri and the suit having been instituted at Khiri, the same cannot be transferred only because of the inconvenience of the applicant.

2. Sri D. K. Singh, learned counsel appearing on behalf of the applicant on the

other hand opposes the said contention. He contends that the transfer having been sought to the Court of Varanasi, which is within the jurisdiction of Allahabad High Court, the said Bench is competent to decide the application u/s 24 of the Code and the inconvenience of the helpless wife is to be weighed, in the facts and circumstances of the case and on merits, therefore, the application should be allowed.

3. I have heard both the learned counsel at length. So far as the second contention raised by Mr. Awasthi is concerned, the same does not appear to be sound. Inasmuch as in a matrimonial proceedings, the Courts within the jurisdiction whereof the marriage was solemnised or where the parties had last resided together, would be competent to entertain such proceedings. Admittedly, the marriage was solemnised at Varanasi whereas the parties had last resided together at Lakhimpur Khiri. Therefore, both Courts at Lakhimpur Khiri and Varanasi are competent to entertain the proceedings.

4. The provisions for transfer of proceedings in the CPC are contained under Sections 22 23 24 and 25 respectively. The procedure under Family Courts Act, 1984 is provided u/s 10 thereof which describes such a family Court to be a civil court and shall have all powers of such Court and that the provisions of Code of Civil Procedure, 1908 would be applicable to the suits and proceedings before the family court except in respect of the proceedings under Chapter IX of the Code of Criminal Procedure, 1973. Thus, while exercising jurisdiction under Family Courts Act, the Court is a civil court governed by the procedure contained in the Code.

5. In cases where different courts have Jurisdiction, the plaintiff is arbiter litis. Law gives right to the person initiating proceeding to choose one of the several forums available and as arbiter-litis, he has a right to choose his own forum. But this right is not an absolute right. Sections 22 and 24 has conferred right on the Court to transfer a case from one Court to other. However, such power is to be exercised judiciously. Therefore, the right of the plaintiff is subject to judicious discretion of the Court. The Courts normally exercise such discretion on the basis of application made by one of the parties. Paramount consideration that weighs the Court when transfer is sought by the defendant from one Court to another, is a question of convenience of the parties. If it is proved to the satisfaction of the Court that the proceedings has been initiated with an intention to put the other party to inconvenience, the court may transfer the proceeding to other Court which would be convenient to both the parties. Such a power is exercised u/s 22 of the Code. However, scope of Section 24 is wider, in exercise whereof a proceeding can be transferred to any other forum competent to try similar matters even if it may not have the territorial jurisdiction.

6. Though very feebly, it was argued by Mr. Awasthi that Section 24 of the Code would not apply to a proceeding under the Family Courts Act in view of restrictions Imposed by Sections 11 to 16 of the said Act, but the said question by now is a settled principle which, however, Mr. Awasthi has fairly conceded. Inasmuch as in the case of Munna Lal Vs. State of U.P. and another, , it has been

held that family court is a civil court and as such. High Court has jurisdiction to transfer case from one family court to another under Sections 22 23 and 24 of the Code. Similarly, a proceeding u/s 125 of the Code of Criminal Procedure can be transferred by the High Court u/s 407 of the Code of Criminal Procedure.

7. Therefore, the second contention that the suit cannot be transferred to Varanasi only on the ground of inconvenience of the applicant, does not appear to be a sound proposition and as such is overruled. This question is to be looked into after applying the relevant tests, on which discretion of the Court is to be exercised having regard to the relevant facts and circumstances including convenience of the parties.

8. The present application has been made u/s 24 of the Code of Civil Procedure. It has not been applied u/s 22 of the Code. Therefore, in the present case it may be open to this Court to transfer the proceeding to any Court competent to try it. But the question remains, as contended by Mr. Awasthi, that whether this petition u/s 24 could be entertained by Allahabad Bench of this High Court when the suit which is sought to be transferred is pending before a Court falling within the territorial jurisdiction of Lucknow Bench of this Court. This situation is to be decided on the basis of the provisions contained in United Provinces High Courts (Amalgamation) Order, 1948 as has been interpreted in the case of Sri Nasiruddin Vs. State Transport Appellate Tribunal,

9. The situation is peculiar to United Provinces now Uttar Pradesh. High Court of Judicature at Allahabad and Chief Court of Oudh were amalgamated and constituted one High Court by the name of High Court of Judicature at Allahabad by virtue of the said 1948 Order. The first proviso to paragraph 14 of the said Order, provides that the Judges nominated to sit at Lucknow would be exercising jurisdiction in respect of the cases arising in such area of Oudh as the Chief Justice may direct though however the Chief Justice by virtue of second proviso thereto at his discretion may order any case or class of cases arising in the said area be heard at Allahabad. This question has since been settled through the ratio decided in the case of Nasiruddin (supra), as observed earlier. The plaintiff being dominus litis is entitled to file suit in any forum and that the Court should not lightly change the forum and compel him to go elsewhere, and paramount consideration in the matter of transfer is being justice according to law, the question of dominus litis is secondary, but which Court in the given situation, by which jurisdiction of the Lucknow and Allahabad Bench as determined is competent Court to exercise jurisdiction u/s 24 in such cases. The jurisdiction of the Lucknow Bench having been determined in terms of paragraph 14 of the 1948 Order, once by the Chief Justice, the suits relating to those areas could be brought before Lucknow Bench for the purpose of exercising power u/s 24 of the Code, in the case of Sushma v. Vikramaditya AIR 1988 All 48, it was held that a proceeding u/s 24 is to be initiated before the Bench within whose jurisdiction the suit sought to be transferred is pending. The said ratio was decided relying on the principle laid down in the case of Nasiruddin (supra).

10. In the case of Nasiruddin (supra), the Apex Court had held that once the area is determined by the Chief Justice in terms of first proviso to paragraph 14, the power is exhausted and after such determination of jurisdiction of the Lucknow Bench, the Chief Justice ceases to have any power to change the area, and thus the Chief Justice of the High Court has, no power to increase or decrease the area in Oudh, in the said case, it was held further :

"Expression "cause of action" with regard to civil matter means that should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within the Oudh area, then Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh, then Allahabad will have Jurisdiction. If the cause of action in part arises in the specified Oudh area and part of cause of action arises outside this specified area, it will be open to the litigant to frame the case appropriately to attract jurisdiction either at Lucknow or at Allahabad."

11. Now in the present case, the cause of action for the application u/s 24 of the Code, arose on the initiation of proceedings at Lakhimpur Khiri. Solemnisation of marriage at Varanasi may be a cause of action for the matrimonial proceeding and the petitioner may be said to be entitled to initiate proceeding, if she so wishes at Varanasi, but such cause of action is distinct and separate from the cause of action for initiation of proceedings u/s 24 of the Code. Such cause of action for transfer of the case arises at initiation of the proceedings at the Court where the plaintiff had instituted the suit. There cannot be any part of the cause of action for transfer of the suit at any place outside Lakhimpur Khiri where the suit has been instituted. Then again. It is a suit pending before the Court within the specified area of Oudh, in respect whereof the Court at Allahabad is precluded from exercising jurisdiction by reason of the compartmentalisation which is peculiar to Uttar Pradesh. It is the Court at Oudh, namely. Lucknow Bench which has jurisdiction in respect of Lakhimpur Khiri by reason of the determination by the Chief Justice under paragraph 14 of the 1948 Order. The suit instituted at Lakhimpur Khiri is sought to be transferred. Lakhimpur Khiri is situated within the Oudh area. It is only the Court at Lucknow can exercise jurisdiction in respect of the said suit. The contention that the Lucknow Bench cannot order transfer to a place outside its prescribed area, is wholly impermissible inasmuch as it can direct transfer of a case pending within its area even to a Court outside its area. It is the question of transferring a suit pending at Lakhimpur Khiri which can be exercised by Lucknow Bench. Allahabad Bench could not exercise jurisdiction in respect of the suit pending at Lakhimpur Khiri even for the purpose of transferring the same to a Court within its Jurisdiction, namely, at Varanasi.

12. Therefore, in the given situation this application ought to have been filed before the Lucknow Bench. Accordingly, this application is transferred to the Lucknow Bench with notice to both the learned counsel. Record may be sent to

the Lucknow Bench within two weeks whereof and the same may be listed subject to permission of the Court concerned on a date within a period of four weeks hereof or as early as possible.

13. In the result, the application be transferred to Lucknow Bench accordingly.