

(1989) 08 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 670 of 1988

Smt. Sudha Sharma

APPELLANT

Vs

Ram Naresh Jaiswal

RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 1990 MP 320 : (1990) MPJR 112 : (1990) 35 MPLJ 225 : (1990) MPLJ 225

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : Fakhruddin, for the Appellant; Narendra Shrivastava and P.S. Gothwal, for the Respondent

Judgement

B.M. Lal, J.

This is claimant's application under Sec. 24 of the CPC for transfer of Misc. Judicial Case No. 11 of 1989 (arising out of Claim Case No. 6 of 1984 which was dismissed in default on 20-1-1989) pending before the Motor Accident Claims Tribunal, Manila to any other Claims Tribunal of competent jurisdiction, preferably to Jabalpur.

The claimant Smt. Sudha Sharma filed a claim petition against Ramnaresh Jaiswal and Dr. M. L. Vishwakarma before the Motor Accident Claims Tribunal, Mandla. It is alleged that her husband late Ashok Kumar Sharma met with an accident and succumbed to the injuries. The vehicle in question belonged to non-applicant. The alleged accident had taken place within the territorial jurisdiction of Mandla Accident Claims Tribunal, therefore, petition for compensation was filed at Mandla.

The applicant is a resident of Jabalpur. She any how passed her LL.B. Examination and got herself enrolled as an Advocate recently. Her husband's death put her in a deplorable condition.

During the pendency of this transfer petition, the Claim Petition (No. 6 of 1984) was dismissed in default and, therefore, an application was made for restoration of the said claim petition vide Misc. Judicial Case No. 11 of 1989 and accordingly the transfer petition was amended stating that Misc. Judicial Case No. 11 of 1989 be transferred to any other Court/Tribunal preferably at Jabalpur.

The grounds for transfer taken by the applicant are about the convenience of the parties, inasmuch as no legal practitioner at Mandla is available to take up her case and further Mandla is not convenient to her for the trial of the case.

Besides the above grounds i.e. convenience of the parties etc., reckless wild allegations were made against the Presiding Judge of the Tribunal for transfer (but later on the same were withdrawn as stated herein-below).

As far as the allegations made against the Presiding Judge of the Tribunal are concerned, it appears that due to earnest persuasion of Shri Fakhruddin, learned Counsel for the applicant, good sense prevailed upon the applicant, who by filing an application withdrew all the allegations and confined her case mainly to the convenience of the parties. The application so made for withdrawal of the allegations against the Presiding Judge was taken on record on 14-8-89. Shri Trivedi, learned Counsel appearing for the non-applicants, however, took time to file reply of all the applications but from the next date the command of the case was taken over by senior counsel Shri P. S. Gothwal on behalf of the non-applicants and he filed reply of all the applications presented by the applicant.

Resisting the application for transfer, Shri Gothwal submitted that no case for transfer is made out, even on the consideration of the convenience of the parties concerned. It is contended that the non-applicants are residents of Nainpur from where the distance of Mandla is only 50 kilometers whereas distance of Jabalpur from Nainpur by road is 150 kilometers and by rail is 100 kilometers and thus transfer of the petition to Jabalpur would cause inconvenience to the non-applicants. More so, the witnesses are also residents of Nainpur, Banni Bazar, Mandla etc.

Before resolving the controversy at issue, it must be pointed out that a foremost duty casts upon the counsel concerned while drafting and making allegations in the transfer petition against the Judge concerned with utmost care and caution, particularly in making wild allegations against the Presiding Judge. But, it appears that now-a-days it has become common feature to make allegations against the Court Presiding Judge. The counsel should realise that they are also officers of the Court. Introducing fanciful and imaginary allegations as grounds for transfer and harbouring apprehension such grounds that fair and impartial justice would not be done should always be deprecated.

Nonetheless, it is also important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to create and maintain such confidence and atmosphere by giving every litigant an assurance by their judicial conduct that fair and impartial justice will be imparted. It is

necessary to create such a confidence in the mind of the litigants so that their faith may not be shaken in Courts of law.

No doubt, exercising powers u/s 24 of the Code of Civil Procedure, is discretionary and therefore with extreme care and caution, power of transfer be exercised by the Court, but all the same such discretionary powers cannot be put within the straight-jacket of cast iron for all the situations and it is always for the Court to find out from the allegations so made, whether any reasonable ground is made out for transfer of the case. Considering broad proposition, the Court must be satisfied that good atmosphere is likely to be extended between the parties if the case is transferred reposing full confidence upon the Court of Justice.

The facts of the instant case are to be judged by applying the yardstick stated in the preceding para and if the submission so made by Shri Fakhruddin that trial at Jabalpur would be convenient to both the parties finds favour then exercise of discretion under S. 24 of the CPC would become necessary, particularly on the face of the statement made at the Bar by Shri Gothwal, learned Counsel for the non-applicants that he has no objection if the case is transferred from Mandla to other places like Chhindwara, Seoni, Balaghat or Dindori, except Jabalpur.

The distance from Nainpur to Chhindwara, Balaghat, Seoni or Dindori, is more or less equal to that of Jabalpur from Mandla. Therefore, trial of the case at the place desired by the non-applicants, if convenient to them, then I fail to understand how the trial at Jabalpur would be inconvenient, specially when the distance from Nainpur to Jabalpur is more or less the same as that of above desired places.

However, the non-applicants in their reply to the allegations made in the petition, submitted that the applicant is a practising lawyer at Jabalpur where she has not only great influence but the atmosphere is also favourable to her and as such transfer of the case to Jabalpur will be greatly detrimental and prejudicial to the non-applicant, but no foundation has been laid for such an apprehension by the non-applicants in their reply and, therefore, it appears that this apprehension is baseless and imaginary one and does not deserve to be taken into consideration.

Since the non-applicants, as stated above, have no objection for the transfer of the case from Mandla but they only wish it to be transferred to Seoni, Chhindwara, Balaghat or Dindori. In such a situation, in the opinion of this Court it would be in the interest of justice if the case is transferred to Jabalpur where trial will be more convenient to the parties considering all the aspects of the circumstances, particularly when round the clock convenience from Jabalpur to Mandla or Nainpur is available.

From the discussion above, the application is allowed and Misc. Judicial Case No. 11 of 1989 (arising out of Motor Accident Claim Case No. 6 of 1984), pending before the Motor Accident Claims Tribunal, Mandla, is transferred to the Motor Accident Claims Tribunal, Jabalpur. The entire record concerning this case be sent

from Motor Accident Claims Tribunal, Mandla to the Motor Accident Claims Tribunal at Jabalpur immediately. There shall be no order as to costs.