

(2000) 04 AHC CK 0117

In the Allahabad High Court

Case No : C.M. Transfer Application No. 195 of 1998

Smt. Zohra Begum and others

APPELLANT

Vs

VIIth Addl. District Judge, Bareilly and another

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

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

Citation : (2000) 2 AWC 1724 : (2001) 4 RCR(Civil) 622

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

Bench : Single Bench

Advocate : Krishna Mohan, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Seth, J.—Mr. Manu Saxena was permitted to address the Court on the prayer of Mr. Ajit Kumar, learned counsel for the respondents in respect of this transfer application on behalf of the opposite party. He pointed out from the counter-affidavit that Smt. Zohra Begum the petitioner No. 1 died on 20th July, 1998 whereas this petition was moved on 27th July, 1998. Therefore, this petition could not be maintained. In support of his contention, he had pointed out from Annexure CA-1 that the appellant-petitioners had made an application in the appeal intimating the Court that the appellant No. 1/1 died on 20th July, 1998.

2. But in the said application. It has been pointed out that the appellant Nos. 1/2 to 1/7 the heirs of Smt. Zohra Begum are already on record as appellants. In this petition, the said heirs of Smt. Zohra Begum are petitioners No. 1/2 to 1/7. Thus even if Smt. Zohra Begum is dead, the point raised by Mr. Manu Saxena cannot be acceded to. The petition may be dismissed as against Smt. Zohra Begum, petitioner No. 1/1, but it cannot be dismissed as against the other petitioners, namely, the petitioners No. 1/2 to 1/7. Therefore, this point does not help Mr.

Saxena in opposing maintainability of the application of transfer.

3. The other ground he had pointed out is that the officer concerned before whom the appeal is pending and against whom allegation had been made had since been transferred. So far as this point is concerned, it may be discussed at a later stage in this order.

4. Mr. Krishna Mohan, learned counsel for the petitioner on the other hand submits that he wants 24 hour's time to file rejoinder-affidavit to the counter-affidavit. Since I have not looked into the counter-affidavit and since the first point is immaterial, therefore, at least in order to counter the first point taken by Mr. Saxena, no rejoinder would be necessary.

5. So far as the second point is concerned, if the officer is transferred. In that event no amount of rejoinder-affidavit could help Mr. Krishna Mohan. However, Mr. Krishna Mohan very fairly concedes that he has no information as to whether the officer has been transferred or he is still there.

6. Be that as it may. It may not be necessary to decide the said question as to whether the officer concerned is transferred or not. If there are no grounds for transfer of the appeal on merit. The other ground is in relation to the allegations against the officer concerned.

7. The allegation is to the extent, apart from the allegation against the officer is that the petitioner has a reasonable apprehension that he will not be getting justice if the appeal is decided by any officer in the district since the opposite party is an office-bearer of the local Bar Association and therefore, the appeal filed by her would be decided in her favour. This apprehension according to Mr. Krishna Mohan can be reasonably apprehended by the appellant petitioner on account of the fact that the appellant petitioner had lost the case in the learned trial court.

8. If every such apprehension is to be accepted. In that event all cases in which a lawyer is involved has to be transferred outside the Courts or districts in which he is practising. This apprehension that has been expressed is a subjective one. It cannot be substantiated objectively. Subjective apprehension is a particular state of mind of a particular person. Such ground of subjective satisfaction cannot be accepted. Even though Mr. Krishna Mohan refers to various decisions of the High Courts as well as Supreme Court with regard to the proposition when an order of transfer is to be made, but it is not necessary to go into those decisions since there is no doubt or dispute with regard to the proposition laid down therein. It is settled principle of law that if there is sufficient reasonable suspicion, however little it may be, in the mind of the litigant, in such circumstances the same has to be taken into account and weighed with as a factor for the purpose of deciding an application u/s 24 of the Code of Civil Procedure. But such suspicion must have some nexus or some objectivity. If some one comes and says that he has some suspicion and apprehension in his mind, in that event it will be too general a proposition and will destroy the entire

infrastructure of the Judicial system. Defeat of a case in the learned trial court cannot be a ground for suspicion. If such a proposition is accepted, in that event whenever a litigant loses then he will be asking for transfer of his appeal, and in that event all appeals are to be transferred simply on the basis of subjective suspicion on the part of the appellant. It will be too wide a proposition which to very difficult to accept. In view of the settled principle the suspicion should be a suspicion to be accepted under the Judicial norms and principles to be a suspicion which could be reasonably harboured by a litigant. The Court has to find out the situation and the circumstances whether the suspicion so harboured could be harboured reasonably by a sensible man.

9. In the facts and circumstances of this case as discussed above, I do not feel that the apprehension in the mind of the appellant could be termed as a reasonable suspicion. Therefore, the ground on which it has been sought to be transferred, cannot be acceded to.

10. It seems that the petitioner had made wide allegations both against the counsel and as against the Court. The way the allegations have been made and the suspicion has been put forward supporting the apprehension, does not seem to be bonafide Inasmuch as while making allegation against the lawyer, the petitioner has also made allegation against the Court. In case the officer has already been transferred, then there could be no basis for harbouring any suspicion any further. Even if he is not transferred even then the allegation that has been made does not appeal to me to be sufficient to accept that the petitioner has a reasonable apprehension as against the officer.

11. In that view of the matter, I am not inclined to interfere. The petition of transfer is, therefore, dismissed. Interim order, if any, stands discharged. It is expected that the concerned officer may decide the appeal as early as possible, preferably within a period of six months from the date a certified copy of this order is produced before the concerned officer. However, it is expected that if the same officer Is continuing, he may overlook and Ignore the allegations made against him and it is expected that he will decide the matter strictly on merits and in accordance with law without being influenced by any observation made either in this order or any allegation made by the petitioner in this application.

12. Let a certified copy of this order be issued to the learned counsel on payment of usual charges at the earliest.