

(1995) 08 GAU CK 0023

In the Gauhati High Court

Case No : Civil Revision No. 431 of 1994

Swapan Ch. Sur and Another

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Assam Frontier (Administration of Justice) Regulations, 1945 — Regulation 50
Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (1995) 3 GLR 379

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

**Advocate : C.K.G. Baruah, G. Mishra and D. Sarma Baruah, for the Appellant;
B.K. Kalita, L.R. Dutta and N.C. Das, for the Respondent**

Judgement

A.K. Patnaik, J.—This is an application under Regulation 50 of the Assam Frontier (Administrations of Justice) Regulation 1945 read with Section 24 of the Code of Civil Procedure, 1908 for transfer of Title Suit No 2 of 1980 pending in the Court of the learned Additional Deputy Commissioner, Roing, Dibang Valley District (Arunachal Pradesh) to the Court of the learned Deputy Commissioner, Karbi Anglong, Diphu.

2. The aforesid Title Suit No. 2 of 1990 has been filed in the Court of Additional Deputy Commissioner, Dib.ang Valley District, Roing, Arunachal Pradesh by the State Bank of India, opposite party No. 1, against the Petitioner No. 1 as borrower and the Petitioner No. 2, the opposite party No. 2 and late Kaling Lengo as guarantors for recovery of a sum of Rs. 2,01,285.71 along with pendentelite and future interest at the rate of 12.1% per annum and for a declaration of charge over the vehicle hypothecated by the Petitioner in favour of the opposite party No. 1. The ground that has been taken in the petition for the transfer of the aforesaid suit to the court of the learned Deputy Commissioner, Karbi Anglong, Diphu is that since Roing is situated in a remote interior in Dibang Valley, District, no advocate is willing to go to Roing for the purpose of defending

the Petitioners in the aforesaid suit. It has been further stated in the petition for transfer that both the Petitioners are residents of Diphu Town in Karbi Anglong District of Assam and they have to go by bus or train from Diphu to Tinsukia Town which is at a distance of 380 K.M. from Diphu and thereafter a further distance of 60 K.M. from Tinsukia to Dhola and from Dhola the Petitioners have to cross the mighty Brahmaputra and two other rivers and after crossing the ferry they have to again go by road to Roing. It has been further stated by the Petitioners that although there is a Court of the Additional Deputy Commissioner, Roing, no Additional Deputy Commissioner is posted there and the Deputy Commissioner comes to Roing by means of a helicopter from the district headquarter at Anini as there is no road communication between Anini and Roing. On these facts, Mr. C.K.S. Baruah learned Counsel for the Petitioners submitted that unless the suit is transferred to Diphu, the Petitioners will go undefended in the said suit.

3. An affidavit-in-opposition has been filed on behalf of the opposite party No. 1, State Bank of India, wherein it has been inter-alia stated that Roing is well connected with the District Headquarter with regular bus and private transport as well as weekly helicopter service and that the opposite party No. 1 has filed a number of cases in the Court of the Additional Deputy Commissioner, Roing against other parties and the Additional Deputy Commissioner, Roing is holding court regularly. The opposite party No. 1 has also stated in the affidavit-in-opposition that besides local advocates of Roing, more than 20 advocates from Margherita, Tinsukia, Dibrugarh and Dhemaji liars regularly attend and conduct suits and cases in the Courts at Roing and that the Advocate of the opposite party No. 1 is also attending the Courts in different cases. The opposite Party No. 1 has alleged in the said affidavit-in-opposition that the Petitioners have filed this revision only to delay the execution of an order of attachment of the vehicle hypothecated in favour the bank passed in the aforesaid suit by the Court of the Additional Deputy Commissioner, Roing. An affidavit-in-opposition has also been filed by the opposite party No. 2 Kali Pada Saha, stating that he is the guarantor for the suit loan granted by the opposite party No. 1 to the Petitioner No. 1 and that the Petitioners after availing the loan purchased a Tata Vehicle and were operating the same at Roing and have now shifted alongwith the said vehicle to Diphu. He has further stated that after receiving summons of the aforesaid suit, he has already engaged a local advocate Sri Toni Pertin and has filed a written statement in the suit, but the Petitioners are adopting delaying tactics as a result of which the aforesaid suit is pending since long. The opposite party No. 2 has also stated in the affidavit-in opposition that there is regular Government ferry and other private ferry service for crossing the river Brahmaputra and that there is regular road communication and weekly helicopter service to Roing and that more than 20 advocates from nearby district headquarter are regularly attending courts at Roing in different cases. On the basis of these facts stated in the two affidavits-in-opposition, the learned Advocates for opposite parties No. 1 and 2 opposed the prayer for transfer of the suit from Roing Arunchal Pradesh to Diphu,

Assam.

4. The principle governing the general power of transfer and withdrawal of cases u/s 24 of the Code of Civil Procedure, 1908, has been discussed by the Supreme Court in several cases. In the case of *Indian Overseas Bank, Madras Vs. Chemical Construction Company and Others*, the Supreme Court observed that the Plaintiff is the dominus litis and as such was entitled to institute a suit in any forum which the law allows him and that the High Court in exercise of its power u/s 24 of the CPC 1908 should not lightly change that forum and compel him to go to Anr. Court with consequent increase in inconvenience and expenses to prosecute any suit. Again in the case of *Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*, the Supreme Court speaking through Krishna Iyer, J. said:

Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-(sic) Something more substantial, more compelling, more imperilling from the point of" view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances myriad and vary from case to case. We have to test the Petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

5. The opposite party No. 1 has chosen to file the suit at Roing and this right of the opposite party No. 1 as the Plaintiff to choose the forum available to him under law for instituting the suit cannot be lightly interfered by this Court on the mere ground that it is not convenient for the two Petitioners to travel from Diphu to Roing and defend the suit. Moreover, the opposite party No. 2 has been impleaded as a Defendant in the said suit because as per the case in the plaint, the opposite party No. 2 is a guarantor for the suit loan. But the opposite party No. 2 is a resident of Roing and will have to suffer the same inconvenience of travelling from Roing to Diphu as the Petitioners if the suit is transferred from Roing to Diphu. In *Gift House v. Mohanlal Mundra* (1982) 1 GLR 13 transfer of a suit from Zunheboto to Dimapur was sought on the ground that the distance between the two places was about 230 K.M.s and there was no public transport connecting the two places, but the Court held that the same inconvenience would apply equally to the Plaintiff also, who would in the event of transfer be required to travel to Dimapur and no transfer could be ordered for the convenience of one party to put the other in inconvenience. Further, as it appears, the aforesaid suit is not the only case that has been filed in the Court of the Additional Deputy Commissioner, Dibang Valley District and as has been stated in the affidavit-in-opposition of the opposite party No. 1, several other cases have been filed in the said Court and advocates from nearby Bars have been appearing in the said

cases before the said Court of the Additional Deputy Commissioner, Dibang Valley. The opposite party No. 2 has also stated that he has engaged a local advocate Shri Toni Pertin to defend him in the suit. Thus, the ground taken by the Petitioners that no advocate is willing to go to Roing or is available at Roing to defend the Petitioners in the suit does not appear to be factually correct. In any case, it has been clearly held by the Apex Court in Maneka Gandhi's case (supra) quoted above that easy availability of legal service cannot be a consideration for transfer of a case from one Court to Anr. .

6. There are, therefore, no compelling grounds for transferring the aforesaid Title Suit No. 2 of 1990 from the Court of the Additional Deputy Commissioner, Dibang Valley, Roing, Arunachal Pradesh to the Court of the Deputy Commissioner, Diphu, Assam and this transfer petition is accordingly rejected and the interim order dated 15.9.94 staying further proceedings in the aforesaid suit is vacated.