

(1997) 04 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Transfer Application No. 63 of 1996

Tayal Rubber Private Ltd., and Anr.

APPELLANT

Vs

Punjab National Bank, Muzaffarnagar

RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (1997) 04 AHC CK 0102

Hon'ble Judges : S.K. Phaujdar, J

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—Through this application under Section 24 CPC the defendant in O.S. No. 56 of 1995 prayed for transfer of the suit from the Court of Civil Judge (Senior Division), Kairana, District Muzaffarnagar, to some competent court in Muzaffarnagar proper. On the presentation of the application further proceedings in the suit at the trial Court were stayed by an order of this Court dated 1896. Subsequently the respondent appeared and filed a counter affidavit and the matter was heard.

2. The suit in question was filed by the Punjab National Bank for recovery of an outstanding loan and the suit, as aforesaid" was pending before the Civil Judge (Senior Division) at Kairana, District Muzaffarnagar. The guarantors of the loan lived at Kairana and the property placed as security for the loan was also situated at Kairana. It was contended in the transfer application that the Civil Judge at Kairana was also empowered as a Criminal Court and he could give only half of any working day towards civil work. The matter was, therefore, unnecessarily being delayed. It was also contended that the registered office of the Bank and that of the defendants were situated in Muzaffarnagar and if the suit be tried at Muzaffarnagar it would be to the convenience of both the parties. The applicant urged that they are to take an advocate from Muzaffarnagar to Kairana on every date and that their business at Muzaffarnagar also suffered for their absence on the dates of hearing. A transfer application was moved before the District Judge,

Muzaffarnagar, but the same was rejected.

3. In the counteraffidavit the Punjab National Bank asserted that this transfer application was moved only to delay the proceeding to see that repayment is deferred. It was contended that the cause of action arose at Kairana and two of the defendants reside at Kairana. Moreover the loan was secured by equitable mortgage of immovable property situated within the jurisdiction of the Civil Judge, Kairana. The question of convenience, according to the plaintiffrespondent, also was in favour of the Kairana Court as in case of a probable decree the same could have been executed at Kairana against the property by which the loan was secured.

4. As against this a rejoinder affidavit was filed by the defendantapplicant. It was contended that the jurisdiction of Kairana Court was never challenged, it was only pleaded that the cause of justice would be better served if hearing was taken up at Muzaffarnagar itself.

5. From the tenor of the application for transfer it appears that the applicants are more eager for an earlier disposal and with that end in view, it was urged that transfer from Kairana to Muzaffarnagar was necessary as the Kairana Court was also to take up criminal cases and the court could hardly give time to this suit. This difficulty, if it could be called as one, could easily be passed by a proper direction to the Civil Judge, Kairana, to take up the matter on a daytoday basis. For the Muzaffarnagar, Civil Judge who might be holding civil jurisdiction only, the pressure of work at the district head quarters can be presumed to be heavy and there also chances of delay might be there. On this ground, therefore, transfer may not be directed.

6. On the question of convenience the defendant urged that their's is an industry with a small capital and if they are required to visit Kairana that would affect their business and they are to take a Counsel also from Muzaffarnagar. The choise of the Counsel is with them. Nobody compells them to take an advocate from Muzaffarnagar. On this ground they may not seek transfer. Whenever there is a litigation some sufferance is unavoidable for any party. Two of the defendants are at Kairana, the property securing the loan is also at Kairana and from the point of the view litigation it"would not be presumed that Muzaffarnagar proper could be more convenient for the conduct of the suit. Moreover Kairana is not far of Muzaffarnagar.

7. For all these reasons, I do not think that is a fit case for directing transfer of the suit from Kairana to Muzaffarnagar Court. However, the Court is directed to take up the suit expeditiously, if possible on daytoday basis. With these observations, the transfer application stands dismissed.

Transfer application dismissed.