

---

**(2009) 10 MAD CK 0003**  
**In the Madras High Court**  
**Case No : Tr. C.M.P. No. 251 of 2009**

Varadan and 4 others

APPELLANT

Vs

Govindasamy

RESPONDENT

---

**Date of Decision :** 09-10-2009

**Acts Referred:**

**Citation :** (2009) 5 CTC 306

**Hon'ble Judges :** K.K. Sasidharan, J

**Bench :** Single Bench

**Advocate :** S. Parthasarathy, for Mr. V. Samuthira Vijayan, for the Appellant; N. Nithyanandam, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

K.K. Sasidharan, J.—This is an Application for transfer of the proceedings in A.S. No. 98/2008 from the file of the Principal District Judge,

Tiruvallur to any other Fast Track Court at Tiruvallur. The respondents in A.S. No. 98/2008 on the file of the learned Principal District Judge,

Tiruvallur are the petitioners in the Transfer Petition.

Factual matrix:

2. In the affidavit sworn to by the first petitioner in support of the transfer petition, it was inter alia contended thus:

(a) Petitioners preferred a Suit in O.S. No. 4/2007 against the respondent before the Subordinate Court, Poonamallee praying for a decree of

Specific Performance in respect of the suit property. The Suit was decreed as per judgment and decree dated 29.08.2008. The said judgment and

decree was challenged by the respondent before the Principal District Judge, Tiruvallur in A.S. No. 98/2008.

(b) There was another Suit filed by the first petitioner against the respondent in O.S. No. 5/2007 on the file of the Subordinate Judge,

Poonamallee. The Suit was for a decree of specific performance. The said Suit was also decreed as per judgment and decree dated 29.08.2008.

The judgment and decree was challenged in A.S. No. 99/2008 and the Appeal is also pending on the file of the Principal District Judge, Tiruvallur.

Both the Appeals in A.S. Nos. 98 and 99/2008 came up before the District Judge on several occasions. However, the matter was adjourned

periodically at the instance of the respondent.

(c) In the meantime, the respondent filed an Application in I.A. No. 38/2009 in A.S. No. 98/2008 invoking Order 41, Rule 27, C.P.C. The said

Application was opposed by the petitioners. The learned District Judge as per Order dated 15.07.2009, allowed the Application even before

hearing the Appeal. The said Order in I.A. No. 38/2009 was challenged before this Court in C.R.P. (PD) No. 1991/2009.

(d) The Appeal in A.S. No. 98/2009 originally came up for hearing on 20.01.2009 and the petitioners entered appearance through counsel. The

Appeal was adjourned to 16.03.2009. Subsequently, lower Court records were received by the learned Judge and the Appeal was re-posted to

24.04.2009 for arguments. The Appeal later came up for hearing on 28.04.2009, 04.06.2009, 13.06.2009, 03.07.2009, 07.07.2009 and

10.07.2009. The Appeal was adjourned periodically as the respondent herein was not ready. When the Appeal was taken up on 13.07.2009, the

counsel for the petitioners requested the learned Judge to post both the Appeals together for arguments. However, the learned District Judge

insisted to argue the Appeal in A.S. No. 98/2008 alone. Though the respondent did not advance arguments on the said date, the counsel for the

petitioners argued the Appeal. The Appeal was adjourned to 14.07.2009 and it was further adjourned to 15.07.2009. When the Appeal came up

for hearing on 15.07.2009, counsel for the respondent argued the matter. The learned counsel appearing on behalf of the petitioners requested the

learned Judge to post the Appeal on another date for reply arguments. However, the learned District Judge was not inclined to adjourn the matter

and made a comment that the petitioners have no case in the Appeal and straightway posted the Appeal for judgment on 28.07.2009.

3. According to the petitioners, the learned District Judge has made up his mind to allow the Appeal without giving sufficient opportunity to put-

forth their case. The affidavit further proceeds that certain statements made by the learned Judge during the course of hearing cannot be revealed in

the Transfer Petition. In such circumstances, petitioners were convinced that they would not get justice from the learned Judge which made them to

file the Transfer Petition.

4. Respondent on appearance through counsel filed counter affidavit wherein the entire allegations levelled against the Presiding Officer was

denied. According to the respondent, the Appeal was fully heard by the learned District Judge and the matter was reserved for Judgment. It was

only at that point of time, petitioners have filed this Transfer Petition with ulterior motives.

Supporting Affidavit:

5. During the pendency of this Transfer Petition, sworn affidavit of the counsel who appeared for the petitioners before the District Court,

Tiruvallur, was also filed. In the said affidavit, the learned Counsel narrated the facts leading to the initiation of transfer proceedings including the

observation made by the learned Appellate Judge with respect to the merits of the matter. According to the learned Counsel, the facts and events

narrated in the Transfer Petition, the open assertion made by the Hon''ble Judge and failure to afford opportunity to advance further arguments in

the Appeal made him to entertain serious doubt and apprehension that no justice would be rendered by the Hon''ble District Judge.

Submissions:

6. The learned Senior Counsel appearing on behalf of the petitioners contended that the petitioners were not given sufficient opportunity to make

their submissions. The observation made by the learned Trial Judge with respect to the merits of the case has been substantiated by the affidavit

filed by the counsel who appeared for the petitioners before the Appellate Court. According to the learned Senior Counsel, petitioners were

convinced that they would not get justice from the learned District Judge and it was only on account of the said reason, Transfer Petition was filed.

7. The learned Counsel for the respondent would submit that the petitioners have indulged in forum shopping and the reason stated in the affidavit

is not sufficient to transfer the Appeal. The learned Counsel further contended that no remarks were made by the learned District Judge with

respect to the merits of the case and as such, the entire averments in the affidavit were made up only for the purpose of making out a ground for transfer.

The issue:

8. The only point which arises for consideration is as to whether the petitioners have made out a case for transfer of the Appeal from the file of the learned District Judge, Tiruvallur to any other Court.

Discussion:

9. In the affidavit filed in support of the Transfer Petition, first petitioner has stated that the learned District Judge made an observation in open

Court that the petitioners have no case on merits and posted the matter for Judgment without giving them an opportunity to submit reply arguments.

In paragraph No. 6 of the affidavit, the first petitioner has also stated that certain statements made by the learned Judge during the course of

Appeal cannot be revealed in the affidavit. Therefore, the affidavit proceeds on the basis that certain comments were also made by the learned

District Judge in addition to the observation with regard to the merits of the matter. However, the affidavit sworn to by the learned Counsel on

record for the petitioners does not contain any such statement. The learned Counsel has very fairly submitted that the observation was only in

respect of the merits of the case, as according to him, the learned District Judge while declining the request for adjournment for the purpose of

making reply arguments, made a comment that the respondents in the Appeal, has no case on merits. Therefore, the statement in paragraph 6 of

the affidavit that certain other comments were also made in addition to the one with regard to the merits of the case appears to be incorrect. The

only ground which is found in the affidavit filed in support of the Transfer Petition as well as from the affidavit filed by the learned Counsel for the

petitioners pertains to the statement made by the learned District Judge with respect to the merits of the matter after hearing arguments of the

petitioners and the respondent.

10. The case before the learned District Judge was a regular First Appeal. Petitioners are the respondents in A.S. No. 98/2008. First petitioner

alone is the respondent in A.S. No. 99/2008. The cause of action for filing the respective Suits, sale agreement and the suit property are all

different and therefore, the petitioners cannot insist the Court that both the Appeals should be taken together. The grievance of the petitioners to

the effect that the learned Judge insisted to argue A.S. No. 98/2008 alone cannot be a reason for transfer of proceedings.

The relevant law:

11. Statutory provisions as contained in Order 41, Rule 16, C.P.C. provides the procedure with respect to Appeal. Order 41, Rule 16, C.P.C.

would read thus:

Procedure on hearing

16. Right to begin.--

(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the Appeal.

(2) The Court shall then, if it does not dismiss the Appeal at once, hear the respondent against the Appeal and in such case the appellant shall be

entitled to reply.

12. As per Order 41, Rule 16, C.P.C., appellant shall be heard in support of the Appeal at the first instance and the respondent would be heard

thereafter and the appellant would be entitled to reply.

13. Appellate Court is within its powers to pronounce Judgment immediately after concluding the arguments. Order 41, Rule 30 relates to

Judgment in Appeal and it would read thus:

Judgment in Appeal

30. Judgment when and where pronounced.--

(1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on Appeal or in the Court

from whose decree the Appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at

once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order

passed in the Appeal are read out and it shall not be necessary for the Court to

read out the whole judgment, but a copy of the whole judgment

shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.

14. Even according to the petitioners, the Appeal was heard by the learned District Judge on two occasions. The petitioners were heard on

13.07.2009 and the respondent was heard on 15.07.2009. By that time, the learned District Judge was having a clear picture of the entire matter

and Rule 30 of Order 41 empowers him to pronounce Judgment at once. The question of the respondent in the Appeal making a reply argument

was not contemplated in the CPC and it was purely the discretionary jurisdiction of the Appellate Court. Therefore, the petitioners being the

respondents in the Appeal was not entitled for a reply hearing as a matter of right. Therefore, when the learned District Judge was thorough with

the facts and law, having observed the arguments advanced on either side, there was nothing wrong in making an observation that the petitioners

have no case in the Appeal.

15. Petitioners have no grievance that even before commencing the arguments, the learned District Judge has made certain observations about the

merits of the matter. Even according to the petitioners, it was only after concluding the arguments on either side, the learned Judge made an

observation on merits. When the CPC permits the learned District Judge to pronounce the Judgment in open Court at once after concluding the

arguments, it cannot be said that he was not entitled to make an observation about the merits of the matter.

16. Petition for transfer cannot be allowed as a matter of course. The totality of the case has to be considered. The bona fides in filing the

Application for transfer is also a relevant consideration for exercise of discretion. In the case on hand, in his eagerness to get transfer, the first

petitioner has sworn to an affidavit indicating certain statements made by the learned Judge during the course of hearing the Appeal in open Court.

However, such statements were not found in the affidavit filed by the learned counsel on record. Therefore, it is clear that the petitioners have not

come to this Court with clean hands.

17. The learned Appellate Judge cannot be a mute spectator while hearing an Appeal. There should be effective discussion during the course of

hearing to clarify the points, as it would enable the Court to take a decision on merits. However, in that process of understanding, in case the

Presiding Officer makes any comment on the merits of the matter, it cannot be misunderstood as an expression of opinion.

The legal principles:

18. In *In the Matter of: K*, a Judicial Officer, the Apex Court underlined the requirement of Judicial Officers to be bold and fearless and

observed thus:

7. A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to his views

and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it

is within four-corners of law that any action taken by a subordinate Judicial Officer is open to scrutiny in judicial review before a superior forum

with which its opinion may not meet approval and the superior Court may upset his action or opinion. The availability of such fearlessness is

essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression

of a Judge.

19. In *R. Balakrishna Pillai Vs. State of Kerala*, the petitioner wanted the proceedings pending against him before the High Court of Kerala to be

transferred to the High Court of Karnataka, on the ground that the learned Presiding Judge effectively worked against him as an Advocate before

the Commission of Enquiry and as such, he would be prejudiced against him in spite of passage of time and his elevation as a Judge of the High

Court. The Supreme Court rejected his contention and observed thus:

10. Further, the contention raised by the learned counsel for the petitioner that one of the Judges of the Bench was appointed and has worked as

an Advocate to assist Justice K. Sukumaran Commission to inquire into malpractices in the execution of the rectification work in the hydroelectric

project called Edamalayar Project and, therefore, the petitioner is not likely to get justice if the Appeal is decided by the said Bench, deserves to

be rejected. It is true that one of the principles of the administration of justice is that justice should not only be done but it should be seen to have

been done. However, a mere allegation that there is apprehension that justice

will not be done in a given case is not sufficient. Before transferring the case, the court has to find out whether the apprehension appears to be reasonable. To judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appear to the Court to be reasonable, genuine and justifiable. In the present-day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons.

20. In *Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*, the Supreme Court indicated the parameters for transfer of judicial proceedings thus:

2. 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-grievances. Something more substantial, more compelling, more imperiling, 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 may be myriad and vary from case to case.

21. In the case on hand, the Appeal was fully heard, and the Appellate Judge was in a position to deliver judgment. CPC also permits him to deliver judgment immediately after closing the arguments. Therefore, the alleged observation made by the learned Appellate Judge with respect to the merits of the matter for the purpose of declining adjournment to make further submission cannot be a reason to transfer the Appeal. Therefore, I am of the view that the petitioners have not made out a case for withdrawal of the proceedings from the file of the District Court, Thiruvallur.

22. The learned District Judge is directed to post the Appeal for further hearing on a particular date within fifteen days from today, so as to enable the petitioners to make their submissions. In case the petitioners fail to make use of the said opportunity, it would be open to the learned Judge to dispose of the matter on merits and as per law.

Disposal:

The Transfer Petition is dismissed with the above observation. No costs. Consequently, M.P. No. 1/2009 is also dismissed.