

[2022 LiveLaw \(Del\) 215](#)

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE C. HARI SHANKAR
MARCH 15, 2022

ANKUR MUTREJA

versus

AVIATION EMPLOYEES COOPERATIVE HOUSE BUILDING SOCIETY LTD.

Judicial Bias - Though the standard of bias is one of apprehension rather than of proof, the apprehension has to be real and not merely chimerical or fanciful or a method to somehow try one's luck before another Court. (Para 17)

CM(M) 236/2022& CM No.13051/2022, CM No.13052/2022, CM No.13053/2022, CM No.13054/2022, CM No.13055/2022, CM No.13056/2022

J U D G M E N T

1. This petition, under Article 227 of the Constitution of India, seeks intervention in respect of an order dated 9 CM (M) 236/2022 thMarch, 2022 passed by the learned District Judge, Karkardooma Courts in M.No.01/2022. M.No.01/2022 was an application preferred by the petitioner, who appeared in person before the trial court and is also appearing in person before this Court, under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), seeking transfer of CS 7733/2016 (***Aviation Employees Cooperative House Building Society v. Pushpa Mutreja& Ors.***) [The petitioner submits that the cause title is wrongly noted in para 1 of the impugned order], from the Court of the learned Additional Senior Civil Judge, where it is presently pending, to another Court.

2. To a query from the Court as to the ground on which the petitioner seeks transfer of the matter from the Court before which it is presently pending, Mr. Mutreja submits that the learned ASJ, presently dealing with the matter, is biased against him.

3. Three instances are cited by Mr Mutreja, before me, to substantiate his plea of bias, on the part of the learned ASJ, against him.

4. The first is that, vide order dated 15thSeptember, 2021, the learned ASJ dismissed a review application filed by the petitioner on the ground of limitation, despite the Supreme Court having, by its orders in ***Suo Motu Writ Petition (C) No.3/2020 (In Re: Cognizance for Extension of Limitation)*** extended limitation during the period of the COVID-19 pandemic. He submits that he had to approach this Court to get the order set aside.

5. The second instance of bias, as per Mr. Mutreja's submission, is to be found in the following sentence, figuring in the order dated 9thDecember, 2021, passed by the learned Additional Senior Civil Judge:

"The applicant has himself submitted that plaintiff is in the possession of the suit property while referring para 5 of the plaint, thus, the peaceful possession of the suit property has not been refuted by the defendant."

Mr. Mutreja submits that he moved an application before the learned ASCJ for rectification of the aforesaid order dated 9thDecember, 2021, in which he categorically

denied having made the submission as recorded hereinabove. By order dated 22nd December, 2021, the learned Additional Senior Civil Judge noted, qua this application, thus:

“Meanwhile, defendant no. 3 submits that he has filed an application under Section 151, 152 and 153 of CPC for modification and clarification of some observations of the court made in order dated 09.12.2021. The said application and the prayer of the defendant no. 3 are noted and taken on record.”

Mr. Mutreja submits that the learned Additional Senior Civil Judge ought to have rectified the earlier order dated 9th December, 2021 instead of merely contenting himself by taking the said application on record. Till such rectification is done, he submits that the erroneous recital in the order dated 9th December, 2021 would continue to remain part of the record and would prejudice him in future proceedings. This too, submits Mr Mutreja, indicates that the learned ASCJ is biased against him.

6. The third instance of bias, according to Mr. Mutreja, is with respect to an application under Section 65 of the Indian Evidence Act, preferred by the respondent, to bring on record, in the proceedings, a copy of an undertaking given by Defendants 1 and 2 in the suit. Mr. Mutreja submits that the application sought to justify the request to take the said document on record on the basis of a mere averment that the copy had been compared with the original. He submits that, on 22nd December, 2021, the learned trial court had fixed the application for arguments tomorrow i.e. on 16th March, 2022. He submits that he had requested permission to address arguments on the application but that the learned trial court orally expressed its opinion that he would have no *locus standi* in the matter and that the application would have to be decided only by hearing Defendants 1 and 2. He, however, acknowledges that there is no such recital, opinion or observation, to be found in the order dated 22nd December, 2021.

7. Mr. Mutreja submits that, in all probability, tomorrow, the application would be heard and allowed and, thereafter, the respondent would close its evidence, so that his last opportunity to cross examine the respondent would be tomorrow, whereafter no such further opportunity would be available to him.

8. The impugned order of the learned District Judge observes that the petitioner had not been able to make out any convincing case of a legitimate apprehension of bias, against the learned ASCJ.

9. I entirely agree.

10. A request for transfer of a case from a Court before which it is pending to another Court, without justified reasons, practically amounts to an abuse of process, as it would tantamount to forum shopping. The three instances which have been cited by Mr. Mutreja, and on the basis of which he seeks to support his allegation of bias, by the learned Additional Senior Civil Judge against him, do not, by the farthest stretch of imagination, make out any such case. The mere fact that the petitioner may be unhappy by the manner in which the case is progressing before the trial court, is no ground for the petitioner to uproot the matter from the court in which it is pending and plant it elsewhere. If such an attitude is to be countenanced, no judicial officer would be able to function

dispassionately.

11. The first instance of alleged bias, as per the petitioner's allegation relates to the dismissal of a review application on the ground of limitation. That order was subsequently set aside. Even if that order were contrary to the order of the Supreme Court in ***Suo Motu Writ Petition (C) No.3/2020***, at the highest, it would indicate that the order was erroneous and not that it was biased.

12. The second instance of bias relates to what, according to the petitioner, was an erroneous recording of a submission made by him in the order dated 9thDecember, 2021. He filed an application for rectification of the order. The learned Additional Senior Civil Judge has noted what is contained in the application and taken the application on record. The order dated 22ndDecember, 2021, taking the application on record, does not indicate that the petitioner insisted on separate orders being passed on the application. Nor has the petitioner chosen to assail the order dated 22ndDecember, 2021, despite contending, today, that the inaction of the learned ASCJ in passing any orders on his application tantamounts to bias. Needless to say, it does not. The petitioner would, however, be at liberty to move the learned ASCJ for passing of specific orders on his application *qua* the order dated 9thDecember, 2021 and any such request if made would be considered by the learned ASCJ dispassionately and on its own merits.

13. The third instance of alleged bias is even more ephemeral. The learned ASCJ has, by his order dated 22ndDecember, 2021, merely permitted the application under Section 65 filed by the respondent to be taken on record and has fixed the application for hearing tomorrow. Needless to say, it is always open to a party to file a proceeding before a court, and no Court can refuse to take an application, duly filed, on record. No error, whatsoever, can be said to exist in the decision of the learned trial court to take the application of the respondent under Section 65 of the Indian Evidence Act on record.

14. Mr. Mutreja's contention is that he had requested that he should be heard on this application. There is no mention of any such request in the order dated 22ndDecember, 2021. Nor is there any indication, in the said order, of the trial court having entertained the request and rejected it, as Mr. Mutreja seeks to canvas before this court. The application is listed tomorrow for hearing. It shall be open to Mr. Mutreja to request for being given an audience in the application. It would be entirely up to the discretion of the learned ASCJ as to whether to permit the request or not. This grievance is completely premature and is being cited, apparently, only to augment the case of bias that the petitioner seeks to build up against the learned ASCJ.

15. Equally, the apprehension, expressed by Mr. Mutreja, that the respondent would close evidence tomorrow and that he would not have any further opportunity to cross examine the respondent, does not call for any observation, much less any finding, from this Court. This Court is not clairvoyant and, to its knowledge, neither is Mr. Mutreja. It cannot be predicated as to what would happen tomorrow. In case the proceedings tomorrow are, in any manner, susceptible to challenge, it would always be open to any party, aggrieved by the proceedings, to seek appropriate remedies thereagainst.

16. *Prima facie*, this petition is an abuse of process of court. The petitioner has apparently no genuine *bonafide* case of bias against the learned ASCJ. A case of bias is being

sought to be built up merely because the proceedings are not progressing as the petitioner would have them progress.

17. “Bias” is defined, in ***State of W.B. v. Shivananda Pathak, (1998) 5 SCC 513*** thus:

“Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.”

In ***Transport Department v. MunuswamyMudaliar, 1998 Supp SCC 651***, the Supreme Court ruled thus, on bias:

“A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. The test for bias is whether a reasonable intelligent man, fully apprised of the circumstances would feel a serious apprehension of bias.” Though the standard of bias is one of apprehension, rather than of proof, the apprehension has to be real; not merely chimerical or fanciful, or a method to somehow try one’s luck before another Court.

18. Allegations of bias against a judicial officer are not to be likely made. Even issuance of notice on such an application has serious deleterious repercussions for the judicial officer concerned. Every judicial officer is expected to act without fear or favour, affection or ill will. That is the solemn oath which every judicial officer subscribes to, at the time of entering into his office. If a request for transfer such as this, alleging, without a scintilla of material, bias on the part of the judicial officer, is to be entertained, this Court is constrained to observe that it would be impossible for judicial officers to function dispassionately or discharge their duties without fear or favour.

19. Ordinarily, this court refrains from imposing costs on parties who prosecute their cases in person. This case, however, is an extreme example of abuse of process. It seeks, in a manner completely contrary to the law, to interfere with pending proceedings and also seeks to throw a cloud on the integrity of a judicial officer without any material whatsoever.

20. I am constrained, therefore, despite the fact that the petitioner appears in person, to dismiss this petition with costs of ₹ 25,000/- to be deposited by the petitioner with the Registry of this Court by way of a crossed cheque favouring the Delhi High Court Legal Services Committee. Let the cheque be presented within a period of one week from the date of receipt, by the petitioner, of a certified copy of this order, failing which this Court would treat it as contempt.

21. The petition stands dismissed in the aforesaid terms.

22. Copy of the order be provided *dasti* to the petitioner as soon as it becomes available.