

IN THE COURT OF SHRI GIRISH KATHPALIA,
PRINCIPAL DISTRICT & SESSIONS JUDGE (HQs)
TIS HAZARI COURTS, DELHI.

TP (C) No. 31/2021

SH. RAKESH KUMAR JAIN
C/o SHOP (PRIVATE NO. 7)
3408-3410, GALI HAKIM BAQA
HAUZ QAZI, DELHI-110 006

....PETITIONER

VERSUS

SH. SATISH ARORA
S/o SH. MOOL CHAND ARORA
C/o SHOP NO. 3544, CHAWRI BAZAR
DELHI-110 006

....RESPONDENT

Date of filing : 26.03.2021
First date before this court : 27.03.2021
Arguments concluded on : 02.11.2021
Date of Decision : 15.11.2021

APPEARANCE : *Sh. Madan Lal Sharma, counsel for appellants*
Sh. Vinay Gupta, counsel for respondent

J U D G M E N T

1. By way of this petition under Section 24 CPC, the petitioner facing eviction proceedings under Section 14(1)(e) of the Delhi Rent Control Act has sought transfer of the proceedings out of the court of learned CCJ-cum-ARC (Central), Tis Hazari Courts, Delhi (*hereinafter referred to as "the concerned Judicial Officer"*) to some other court of competent jurisdiction. On service of notice, the respondent entered appearance through counsel. I heard learned counsel for both sides.

2. On the very first date, when this petition was taken up for preliminary hearing, learned counsel for petitioner took me through paras 8 and 9 of the petition and submitted that “out of decency and to uphold majesty of court” he had opted not to explicitly incorporate in the petition, comments made by the concerned Judicial Officer and had left the same as blank. Going by these submissions, petitioner was directed to file an affidavit in sealed cover, testifying the alleged comments of the concerned Judicial Officer. The said affidavit was directed to be prepared in Hindi, so that the petitioner be not unaware of the nature of allegations sought to be leveled against a Judicial Officer. The petitioner filed his Hindi affidavit in closed envelop and on the next date after examining the same, I recorded that I was not satisfied to stay proceedings pending before the concerned Judicial Officer without hearing complete arguments and without seeking comments of the concerned Judicial Officer. Accordingly, the concerned Judicial Officer was requested and he sent his comments in sealed cover. Learned counsel for both sides were granted opportunity to inspect the comments of the concerned Judicial Officer. Respondent also filed reply to the transfer petition.

3. Briefly stated, the case set up by the petitioner is as follows.

3.1 The subject proceedings were listed before the concerned Judicial Officer on 29.09.2020, when due to Covid lockdown, the matter was taken up through video conferencing and was adjourned to 03.11.2020 as written arguments of the present petitioner were on record while counsel for the present respondent requested for time to file

written synopsis. On 03.11.2020, the matter was again adjourned to 03.12.2020 and since the present respondent did not file written arguments, the matter was adjourned to 11.05.2021 for disposal of application for leave to defend.

3.2 In the meanwhile, the present respondent filed an application for early hearing, which was taken up on 18.01.2021 and was adjourned to 12.02.2021 for service of notice on the present petitioner. On 12.02.2021, the concerned Judicial Officer being on leave, the early hearing application was posted for 18.02.2021. On 18.02.2021, at request of the present respondent, the early hearing application was adjourned to 10.03.2021.

3.3 On 10.03.2021, the concerned Judicial Officer allowed the early hearing application with consent of the proxy counsel for the present petitioner and accordingly, the date 11.05.2021 fixed earlier was cancelled. Having allowed the early hearing application, the concerned Judicial Officer on 10.03.2021 itself proceeded to hear arguments on the application for leave to defend. When proxy counsel for the present petitioner expressed inability to address arguments on leave to defend as he had been instructed by the main counsel only to consent for early hearing, the concerned Judicial Officer insisted for arguments to be addressed on 10.03.2021 itself. Further, the concerned Judicial Officer also observed that since written arguments had already been filed by the present petitioner, the leave to defend application would be decided after hearing the counsel for the present respondent. After conclusion of arguments on leave to defend addressed by the present respondent, the

concerned Judicial Officer made an observation, which is not quoted explicitly in the transfer petition but mentioned in the Hindi affidavit of the petitioner that “*nyaayaadhish ji taish mein aakar bole ki vakeel sahab aap ko meri power ka gyan nahi hai, main aapko dinaank 31.03.2021 to apni power dikhaaungaa aur agli tareekh 31.03.2021 ki tareekh nishchit kar di*” (the concerned Judicial Officer got enraged and told the proxy counsel for the present petitioner that the counsel did not know powers of the Judicial Officer and he would show his powers on 31.03.2021). Therefore, the petitioner has lost faith in the concerned Judicial Officer. Hence, the present transfer petition.

4. During arguments, learned counsel for petitioner reiterated the above circumstances and argued that on 10.03.2021 when early hearing application was allowed, the concerned Judicial Officer should have adjourned the matter for hearing on the leave to defend application instead of hearing arguments on the same day; that the leave to defend application being the application of the present petitioner, it is the present petitioner who should have been heard first instead of the counsel for the present respondent being heard first; that in his comments, the concerned Judicial Officer has submitted a parawise reply, as if he is an adversary. Final arguments were concluded on 02.11.2021 and it was considered appropriate to pass oral judgment but the same could not be possible due to pending heavy board, so all arguments advanced on behalf of petitioner were recorded in presence of both sides in order dated 02.11.2021. The relevant extract of order dated 02.11.2021 reflecting the arguments advanced on behalf of petitioner is quoted as follows:

“Final arguments heard and concluded. Basically, transfer has been sought on the ground that the petitioner apprehends that he would not get justice and fair trial because having allowed the early hearing application, the learned trial court ought to have fixed a fresh date for hearing on leave to defend instead of insisting for arguments on leave to defend to be addressed immediately; that in his Hindi affidavit, the petitioner has stated that the learned concerned judicial officer got enraged and stated that he would show his power on 31.03.2021 and posted the matter for orders on that day; and that instead of sending comments on the transfer petition, the learned judicial officer has filed parawise reply as an adversary. No other ground for transfer has been raised. It is clarified that the grounds have been noted down in this order because it was considered appropriate to pass oral judgment but on account of pending board, the same is not possible.

List for orders on 10.11.2021”

In support of his argument that if a litigant apprehends that he would not get justice from the concerned court, it is the duty of the court to transfer the case, learned counsel places reliance on the judgment of the Hon’ble Supreme Court in the case of *Kulwinder Kaur vs Kandi Friends Educational Trust*, (2008) 3 SCC 659.

5. On the other hand, learned counsel for respondent argued that contents of the transfer petition are contrary to the judicial orders, insofar as the concerned Judicial Officer did not conclude the arguments on leave to defend application on 10.03.2021, and rather, on 10.03.2021

only part arguments were heard and matter was adjourned for a further period of 21 days; that the present transfer petition was filed not immediately after 10.03.2021 but hardly 3 days before the next date fixed by the concerned Judicial Officer to conclude arguments on leave to defend, and the sole purpose of the present petitioner was to thwart the hearing on leave to defend by obtaining an *ex parte* stay on the proceedings pending before the concerned Judicial Officer; that if the concerned Judicial Officer had to show off his powers, nothing prevented him from disposing of the leave to defend application on 31.03.2021 as there was no stay on the proceedings pending in his court.

6. Thence, the case set up by the petitioner, seeking transfer of the subject judicial proceedings is on the allegation of bias against the concerned Judicial Officer. It would be apposite to briefly traverse through the legal position relevant for present purposes.

7. Broadly speaking, bias is a predilection to hold a partial perception knowingly to unknowingly, which is often accompanied with a refusal to consider the possible merits of an alternative view point. In the case of *State of Punjab vs V.K. Khanna*, Civil Appeal 6963/2000, decided on 30.11.2000, the Hon'ble Supreme Court of India held thus :

“We think that the reviewing authority must make a determination on the basis of whole evidence before it, ***whether a reasonable man would in the circumstances infer that there is likelihood of bias. The court must look at the impression which other people have.*** This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that

there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless there must be a real likelihood of bias. ***Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent***". (emphasis supplied)

8. In the case of ***Ashish Chadha vs Asha Kumari***, (2012) 1 SCC 680, the Hon'ble Supreme Court of India held that transfer of cases ordered merely on the say-so of a party have a demoralizing effect on the trial courts and unless a very strong case based on concrete material is made out, such transfers should not be ordered.

9. As held by Hon'ble Gujarat High Court in the case of ***Rajkot Cancer Society vs Municipal Corporation Rajkot***, 1988 AIR 63 Gujarat, mere presumptions or possible apprehension cannot and should not be the basis of transferring a case from one court to another and such power of transfer has to be exercised with due care and caution bearing in mind that there should be no unnecessary, improper or unjustifiable stigma or slur on the court from which the case is transferred.

10. In the case of ***Kulwinder Kaur vs Kandi Friends Education Trust***, (2008) 3 SCC 659, the Hon'ble Supreme Court observed thus:

“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts.

They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit or appeal or other proceedings etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are however illustrative in nature and by no means to be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a fair trial in the court from which he seeks to transfer a case, it is not only the power but the duty of the court to make such order.”

11. Falling back to the present case, can it be said that a reasonable man would infer that the present petitioner might not get justice from the concerned Judicial Officer in view of the circumstances set up by the petitioner ? The answer has to be in negative.

12. It is quite unfortunate that on the very first date when this petition was taken up for hearing, learned counsel for petitioner created such a docudramatic situation to create alarm in the mind of this court by stating that the comments made by the concerned Judicial Officer were such that “out of decency and to uphold the majesty of court” he had left the comments portion blank in the petition. And when the petitioner filed his affidavit in Hindi, the alleged comments turned out to be hardly indecent. Nothing was in the alleged comments, which could not be

mentioned in the petition itself. Apparently, the effort was to somehow create an alarm and obtain an *ex parte* stay on the proceedings before the concerned Judicial Officer.

13. Further, the petitioner also tried to falsely project that on 10.03.2021 itself, the concerned Judicial Officer concluded the arguments on leave to defend and posted the matter to 31.03.2021 for orders, threatening the present petitioner to show his powers. According to order dated 10.03.2021, arguments on leave to defend were only partly heard on behalf of the present respondent and matter was posted for further arguments on 31.03.2021.

14. It is also wrong on the part of petitioner to contend that the application for leave to defend being of the petitioner, it is the petitioner who should have been heard first. For, admittedly the present petitioner had already filed his written arguments. Even otherwise, where the non-applicant raises certain preliminary objections, there is nothing wrong in hearing the non-applicant first.

15. Coming to the allegation that the concerned Judicial Officer got enraged and threatened to show his powers, the present respondent in reply denied any such utterances having been made by the concerned Judicial Officer. The concerned Judicial Officer also in his comments denied having made any such utterances and I do not find any reason to disbelieve the concerned Judicial Officer. For, had the concerned Judicial Officer got enraged and wanted to show off his powers, nothing prevented him from disposing of the leave to defend application on

10.03.2021 itself or even on 31.03.2021, as there was no stay on the proceedings pending before him. Besides, it is not possible to fathom that without any provocation, the concerned Judicial Officer would have got enraged. It appears that complete picture has not been presented before this court by the petitioner.

16. Then comes the argument that the concerned Judicial Officer sent comments in the form of parawise reply as if he is a rival party. I find the argument completely flimsy. How can anyone, against whom allegations are levelled, be denied a right to present his version methodically in detail. It is indeed sad state of affairs that in the recent past a trend is growing where the Judicial Officers are dragged into the dock and they have to defend themselves constantly in order to protect themselves from frivolous complaints. The Judicial Officers in such situations have no choice, but to defend themselves to the hilt. Not just some of the litigants, but even some lawyers do not think twice before filing reckless complaints and transfer petitions in order to avoid contesting the *lis* on merits. In such cases, should the system even snatch away right of the Judicial Officer to defend his dignity ? No.

17. Going a step deeper, I also examined as to whether in view of such allegations itself, the subject proceedings be transferred out of the court of the concerned Judicial Officer, assuming, though not admitting the consequent vindictiveness on the part of the concerned Judicial Officer. I deliberated upon as to whether now that such serious allegations have been leveled by the petitioner, should the subject proceedings be transferred out of the court of the concerned Judicial

Officer to rule out any possibility of any future bias in the mind of the concerned Judicial Officer. There is nothing on record to even remotely suggest that the concerned Judicial Officer would get prejudiced and not continue to remain judicious while adjudicating the subject proceedings, merely because the petitioner tried to get the subject proceedings transferred on the basis of such scandalized projection. At the same time, if on assumption of such possibility, the subject proceedings are transferred out of the court of the concerned Judicial Officer, such an approach would further encourage the litigants to indulge in forum shopping by leveling allegations against a Judicial Officer in order to protract and get the proceedings transferred. Also, it would severely demoralize the District Judiciary to see that any litigant can allege anything, casting aspersions on the Judicial Officers as happened in the present case, where the impression conveyed through the petition and submissions was that it is “out of decency” that the utterances of the concerned Judicial Officer were not quoted in the transfer petition.

18. Further, quite significantly, as mentioned above, the subject proceedings are at the stage, when arguments in writing have already been filed by the present petitioner and the present respondent also has already been partly heard, and the matter is now listed for further arguments. That in itself is a strong reason for declining the transfer request, going by the view taken by the Hon'ble Supreme Court of India in the case of *Pal Singh vs CBI*, (2005) 12 SCC 329.

19. Thus, I find not even an iota of material on record on the basis whereof it could be inferred that there is reasonable apprehension

in the mind of the petitioner that he might not get justice from the court of the concerned Judicial Officer. As described above, the inference of likelihood of bias is not subjective inference of the person seeking transfer of judicial proceedings; the inference of likelihood of bias has to be of a reasonable man. There is absolutely nothing on record to show that a reasonable man would infer likelihood of bias in the present case.

20. It is held that the transfer petition is not just completely devoid of merit but the same is also frivolous and an attempt at protracting the proceedings before the concerned court by levelling baseless allegations. Therefore, the petition is dismissed with cost of Rs. 10,000/- to be paid by the petitioner to the respondent before the concerned court of Additional Rent Controller within one week towards litigation cost of the respondent pertaining to these proceedings. Copy of this judgment be sent to the concerned court of Additional Rent Controller and file be consigned to records.

*Announced in the open court on
this 15th day of November, 2021*

(GIRISH KATHPALIA)
Principal District & Sessions Judge (HQs)
Tis Hazari Courts,
Delhi