* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 30.03.2022**
Judgment pronounced on: 19.04.2022

\+ TR.P.(C.) 5/2022 and CM No. 4249/2022 (stay)

KINRI DHIR ..... Petitioner

Through: Ms. Pinky Anand, Sr. Adv. with Ms. Sandanini Sharma, Ms. Parul Sharma and Ms. Jasmine Kaur, Advs.

versus

VEER SINGH ..... Respondent

Through: Ms. Rebecca M. John, Sr. Adv. with Ms. Gauri Rishi, Ms. Srishti Juneja, Ms. Garima Sehgal and Ms. Adyar Luthra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

A. BRIEF OUTLINE

1. This petition has been preferred seeking transfer of proceedings titled GP No.16/2021 pending before the Court of the Principal Judge Family Court Saket. The petition itself has come to be preferred in the backdrop of disputes having arisen between the parties as a consequence of the breakdown of matrimonial relations.

2. The respective parties are stated to have married as per Buddhist customs on 04 December 2018 in Taipei, Taiwan. A male child was born

from that union on 13 April 2019. The parties stayed at Dehradun between December 2018 to March 2019. The petitioner further discloses that she also stayed at Chandigarh during her pregnancy. She presently resides at C-99, Defense Colony, New Delhi. The relations between the parties appears to have soured immediately or soon after the child was born. The Court finds it inexpedient to either notice or deal with the various allegations which have been levelled by respective parties against each other. This since the present petition is concerned only with the issue of whether the prayer for transfer is liable to be granted.

3. The petitioner here is stated to have moved an application dated 16 January 2021 for protective orders being passed referrable to Section 12 of the **Protection of Women from Domestic Violence Act, 2005**[1]. The petitioner also simultaneously moved an application for interim protection of the person of the minor child under Section 12 of the Guardian and Wards Act, 1980. Along with the main petition preferred under PWDV, the petitioner also moved applications for ex parte and ad-interim directions. On 18 January 2021, the Family Judge passed an order restraining the respondent from removing the minor child out of the custody and care of the petitioner. On 23 February 2021, the Family Judge called upon parties to file their disclosures with respect to assets and income in terms of the judgment of the Supreme Court in **Rajnesh v. Neha**[2].

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[1] PWDV

[2] [(2021) 2 SCC 324]

4. On 06 April 2021, the respondents moved an application seeking modification of the order of 18 January 2021 with the prayer that the respondent be declared the sole guardian and custodian of the minor child and to allow uninterrupted visitation rights. The proceedings thereafter did not move forward since the Court of the concerned Family Judge fell vacant on account of his untimely and sudden demise. It came to be transferred to the Court of the present judge on 23 June 2021. On 09 July 2021, the petitioner moved a further application purporting to be under Section 18(1)(e) of the PWDV seeking various directions including orders of restraint injuncting the respondent from alienating assets, operating bank lockers or in any manner diluting or transferring his interest in various business ventures. The petitioner thereafter asserting a failure on the part of the respondent to comply with the directions issued on 23 February 2021 moved a further petition seeking compliance and for the Family Judge commanding the respondent to furnish all particulars with respect to income and assets. On 02 August 2021, the Family Judge called upon the respondent to file his written statement and for parties to complete pleadings. The matter was posted for 11 November 2021 for the purposes of admission and denial of documents as also for framing of issues. While posting the matter for that date, the Family Judge directed that the petitioner would not take the child outside its jurisdiction and without its permission.

5. The petitioner thereafter moved an application seeking correction of the aforesaid order contending that the concession as recorded for the child not being removed from the jurisdiction of the Court was only to be till the

next date of hearing and which fact the Court had overlooked. She is stated to have thereafter and more particularly on 05 August 2021 moved a further application seeking permission to travel to Dehradun along with the minor child. The application for modification as well as for permission to travel was taken up for consideration on 11 August 2021.

6. Insofar as the application for correction of the order of 02 August 2021 is concerned, the Family Judge proceeded to pass the following order:-

> **"Kinri Dhir anr Anr Vs Veer Singh (G. No. 16/21)"**
>
> **11.08.2021**
>
> **Matter is taken up through video conferencing via Webex Meet.**
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> **……**
>
> I have heard both the counsels at length and have carefully perused the record. Counsel for the petitioner submits that this were never her submissions that petitioner will not leave the jurisdiction of this court without the permission of this court and these submissions were till the next date of hearing. On the other hand counsel for the respondent submits that the order was passed with the full agreement of the counsel for the petitioner and the application itself is contemptuous.
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> So far as the application u/s 151 of CPC is concerned, it may be mentioned that the Courts in India are not so powerless that they will require a concession from a petitioner or his/her counsel to pass any orders. The counsel for the petitioner simply agreed that petitioner shall not leave the jurisdiction of this court which was recorded in the order sheet dated 02.08.2021. The word concession used by the petitioner or her counsel in the application is highly contemptuous as there is no word concession in the entire CPC, Evidence Act or under any other act. The Court does not require a concession from either the parties or their counsels. It was the submissions of the counsel for the petitioner and the Court recorded the same that yes she has agreed on behalf of the petitioner. The application is highly contemptuous and is dismissed."

7. Proceeding to deal with the issue of permission, the Family Judge permitted the petitioner to travel to Dehradun alone and observed that since the pandemic was prevailing, it would be unsafe for the child to undertake the journey. It however provided that it would be open for the petitioner herself to travel to Dehradun. The application of the respondent seeking modification of the visitation and guardianship as provided for in the order of 18 January 2021 was taken up for consideration on 28 October 2021. The aforesaid application of the respondent was disposed of with the Family Judge permitting visitation rights to the respondent who was accorded permission to collect the child daily from the house of the petitioner for two hours everyday between 06.00 PM to 08.00 PM. The aforesaid order forms subject matter of challenge in C.M. (M) 1053/2021.

8. The contentious application made by the petitioner under Section 18 read with Sections 23 and 26 of the PWDV was taken up for consideration by the Family Judge on 09 November 2021. While dealing with the prayers as addressed, the Family Judge proceeded to make the following observations: -

> "6. So far as the first application is concerned, it may be mentioned that the application has been filed under Section 18(1)(E) read with Sections 23 and 26 of the Protection of Women from Domestic Violence Act, but this application under no circumstance be termed as an application claiming maintenance, as in the entire application petitioner/mother is not seeking maintenance. It is an admitted case that respondent has provided the serviced apartment at Defence Colony to the petitioner, where she is residing alongwith her child. It is the respondent who is paying for the rent and also the grocery bills etc. It is also an admitted case that respondent is providing the vehicle and servants etc and all other amenities also as his status to the petitioner. The grievance

of the petitioner is not that she has not been provided the amenities or the life status as per the status of the respondent, but her main prayer in the application is that respondent be restrained from diluting his financial interest (shareholding etc) in the companies and from resigning from the Directorship of the companies, including but not limited to those mentioned in the present application and for passing an order restraining the respondent from alienating any assets, operating bank lockers or bank accounts without the leave of the court, and for further passing an order restraining the respondent from alienating, disposing of and/or creating third party interest in his immovable properties ad alienating and/or disposing of his movable properties. It may be mentioned that though the application has been filed under the Protection of Women from Domestic Violence Act but not a single instance of domestic violence has been cited by the petitioner in her application or during arguments, except the one where she has stated that latch lock of her service apartment has been broken by the respondent.

Counsel for the respondent during arguments stated that if the latch lock of the service apartment is broken, the petitioner can call the carpenter or other person or can complain to the caretaker and at any time can get it repaired. At this stage, no presumption can be raised by the court that the latch lock was broken by the respondent and that too intentionally. What will he gain after breaking the latch lock. Moreover if any part of the service apartment or the latch lock is broken, then petitioner can at any time call the caretaker to and get it repaired. At this stage, the court is only required to see prima facie case and is not required to go into the merits of the case."

7. As per Section 19 of the Protection of Women from Domestic Violence Act, 2005, the respondent has already provided the service apartment to the petitioner, as commensurate to his status and she is living in the same with the child. So far as monetary reliefs are concerned, the reliefs which have been claimed by the petitioner in her application, under no circumstance can be said to be covered under the Protection of Women from Domestic Violence Act, 2005. Under the garb of this application, the petitioner is seemed to be not only seeking partition of the properties of the family of the respondent but also seeking a blanket order, restraining the respondent and his family members from carrying out their business. On one hand, petitioner has stated that respondent has diluted his assets in order the escape the maintenance and on the other hand she is seeking the order restraining the respondent from alienating any assets, operating bank lockers or Bank accounts. If such type of blanket orders are being passed by the court in routine manner,

then it will not only cause irreparable loss and injury to the respondent, but to his other family members also including the married sisters, as they have also the share and stakes in the business run by the family of the respondent. It is not the case of the petitioner that the business was built up by the respondent alone, but it is his family business and naturally his father and other family members must be having stake and shares in that business. If for the purpose of running the family business the respondent has made transfer of certain shares to his other family members, or has resigned from the directorship of one or two companies or has alienated or created third party interest, then it does not lead to the conclusion that he will not maintain the petitioner and the minor child. If this type of interpretation is given to the Protection of Women from Domestic Violence Act, then it will amount to an interpretation of the section in a way which the legislature never intended. It is the respondent, who alongwith his family members is running the family business. It is for him and the other family members to see how the business runs smoothly. If in order to run the business smoothly they have diluted some interest of the respondent, then it cannot be construed as an attempt to not to maintain the petitioner. If the respondent is restrained from operating the bank accounts or the bank lockers without leave of the court, then, not only the business of the respondent will suffer but the employees who are working in the company of the respondent and their family members will also suffer for no fault of theirs. **It seems that under the garb of Protection of Women from Domestic Violence Act petitioner is seeking all the reliefs under the sky. It is only the blackmailing tactic of the petitioner. The forum of the court cannot be used for blackmailing the other party or as the forum to extort money from the other party. Under the garb of this application it seems that petitioner is not only trying to blackmail the respondent but this application is the ploy to extort money from the respondent. Petitioner is already being well maintained by the respondent. All the amenities like house, vehicle, grocery, servants and other household comforts has been provide by the respondent to the petitioner. The application is filed only to blackmail the respondent and his family members.** Same is without any merit and is therefore dismissed." (emphasis supplied)

9. It becomes pertinent to note that the various orders passed by the Family Judge from time to time and noticed above were also questioned

and assailed by parties before this Court by means of proceedings which are detailed below: -

> -Matrimonial Appeal {MAT APP.(F.C.) No. 2 of 2022} filed by the Petitioner against Order dated 9th November 2021 before the High Court of Delhi.
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> -Contempt Petition bearing Cont. Cas.(C) No. 60 of 2022 filed by the Petitioner before this Court.
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> -Petition filed by the Petitioner under Article 227 of the Constitution of India (CMM No. 1053 of 2021) challenging the order dated 28th October 2021 passed by the Family Court.
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> -Petition filed by the Petitioner under Article 227 of the Constitution of India (CMM 373 – 419 No. 541 of 2021) challenging the order dated 11th August 2021 passed by the Family Judge.

The present application for transfer thereafter came to be instituted on 22 January 2022.

B. THE PETITIONER'S SUBMISSIONS

10. Addressing submissions in support of the prayer for transfer, Ms. Anand, learned Senior Counsel appearing for the petitioner, contended that a perusal of the orders of 11 August 2021, 28 October 2021 and 09 November 2021 would establish that the Family Judge was proceeding in a highly prejudiced and biased manner against the petitioner. It was submitted that not only were recitals in the orders passed inaccurate, various statements were also attributed to have been made by the petitioner erroneously. Learned senior counsel would submit that the Family Judge clearly appears to have proceeded as if the petitioner was disentitled to either assert or seek preservation of her rights and claims upon the assets of

the respondent and thus failing to appreciate the true intent and ambit of the provisions contained in the PWDV. In any case it was submitted that the raising of those claims could neither have been held against the petitioner nor justified her being characterized as a blackmailer or for the prayers made being described as extortion. All this according to learned senior counsel is not only indicative of a prejudicial mind set of the Family Judge but evidence of the court having formed a negative opinion with regard to the bona fides of the petitioner. In fact, learned senior counsel would contend, that the various observations made by the Family Judge would establish that it had formed a definitive opinion with regard to the character of the petitioner itself. Learned senior counsel took strong exception to the use of expressions such as extortion and blackmail in the order passed by the Family Judge and submitted that not only did the circumstances not warrant the use of such words, it has left the petitioner firmly and justifiably convinced that the Family Judge would henceforth be unable to try her cause impartially or fairly. According to Ms. Anand, the allegation of bias in the facts of the present case is not merely an apprehension but real and manifest. This according to Ms. Anand, would constitute sufficient ground for this Court to hold the Family Judge as disqualified from proceeding with the matter further.

11. Learned Senior Counsel has then referred to the language and expressions employed where the Family Judge observed that courts were not powerless so as to base their decisions on concession of parties and choosing to describe the application for correction as contemptuous. It was

submitted that the law confers the right on a litigant to seek rectification of recitals appearing in a judicial order. It was argued that while it may have been open for the Family Judge to have rejected that application, there was no occasion for the same being described as amounting to contempt. According to learned counsel, this clearly amounted to browbeating the petitioner and dissuading her from pursuing her rights.

12. Learned Senior Counsel further drew the attention of the Court to the observations as made by the Family Judge in the order of 28 October 2021 wherein it was recorded that the petitioner had repeatedly described the child as illegitimate. It was submitted that the Family Judge clearly committed a factual error in failing to note that the petitioner had never described the child as being illegitimate. It was submitted that the contention that the stand of the respondent who had denied the factum of marriage would result in the child being viewed as illegitimate was incorrectly interpreted.

13. Learned Senior Counsel then sought to highlight the fact that no directions were issued by the Family Judge calling upon the respondent to furnish replies to the applications made by the petitioner here. It was also asserted that on the contrary notices were promptly issued on all applications moved by the respondent. Learned Senior Counsel has further alluded to an incident which transpired on 15 November 2021, where it is alleged that the Family Judge met the counsel for the respondent in chambers. Apart from the aforesaid, learned Senior Counsel has also raised the following issues in support of the contention that the apprehension of

bias was real and would warrant proceedings being transferred from the concerned Judge's Court. These were itemized in the short note submitted by Ms. Anand during the course of her oral submissions as follows:

- NO DIRECTION TO RESPONDENT TO SUPPLY DOCUMENTS
- COURT STAFF FORGERY
- NO RELIEF DESPITE RESPONDENT'S THREAT
- NON-CONSIDERATION OF PETITIONER'S DOCUMENTS
- NON-RECORDING OF COUNSEL'S SUBMISSION
- NON-ADJOURNMENT OF MATTER
- WRONG RECORDING OF APPEARANCE OF COUNSELS

14. Ms. Anand referring to the scope of powers conferred by Sections 24 and 25 of the **Code of Civil Procedure, 1908** submitted that the power of transfer is liable to be exercised in furtherance of the cause of justice and where circumstances do exist it would be the duty of the Court to make such an order. In support of the aforesaid submission Ms. Anand has referred to the following observations of the Supreme Court in **Kulwinder Kaur v. Kandi Friends Education Trust**[3]:-

> "**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, appeal or

[3] **(2008) 3 SCC 659**

> other proceeding, 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 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."

15. It was then highlighted that a Judge while deciding a cause is under an obligation to refrain from entering scathing remarks or sweeping general observations which may have no relevance to the merits of the case. It was submitted that it is imperative that the language employed in the judgment rendered by a Court should not leave the litigant harboring an impression that the adjudicator is either biased against that party or had identified itself with a cause and thus rendering the adjudicator unable to independently assess the merits of the rival claims or to do so impartially. Learned Senior Counsel drew the attention of the Court to the following pertinent observations as appearing in the decision of the Supreme Court in **A.M. Mathur v. Pramod Kumar Gupta**[4]:-

> **"13.** Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will be neither good for the judge nor for the judicial process.

[4] **(1990) 2 SCC 533**

> **14.** The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengeable control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct."

16. Proceeding along these lines, learned counsel also placed reliance upon the principles enunciated by the Bombay High Court in **Sonibai Nathu Kuwar v. State of Maharashtra**[5]. The relevant extracts are reproduced hereinbelow: -

> **"12.** Their Lordships of the Supreme Court in the case of *The State of Uttar Pradesh* v. *Mohammad Naim*, AIR 1964 SC 703 had laid down some parameters and norms which should be followed while making general observations and personal remarks in the judgments.
>
> "It is a principle of cardinal importance in the administration of justice, that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody even by the Supreme Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint.
>
> It is not infrequent that sweeping generalization defeats the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them. It is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of

[5] 2005 SCC OnLine Bom 632

explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

17. In this judgment, we are attempting to reiterate and restate some of the basic features and aspects which should be borne in mind by the Judicial officers, and members of the Tribunal while framing or constructing the judgments and orders.

17.1 No exact instructions could be given as to how the judgment/order is to be prepared. A judgment is the expression of the opinion of a Judge or Magistrate arrived at after due consideration of the evidence and of the arguments, if any, advanced before him. There are no rules, norms or style of universal application for writing or framing of judgments. Section 2(9) of the Code of Civil Procedure defines a judgment as (a) "statement given by the Judge on the grounds of a decree or order". The Criminal Procedure Code does not define a judgment. In *Halsbury's Laws of England* the expression has been understood to mean an order in a trial, terminating in the conviction or the acquittal of the accused and this interpretation has been accepted by the Indian Courts.

17.2. Every Judge or Judicial Officer has his own style of writing judgments. They have to express themselves about the cases which come up for decisions before them in their own style. Cases which come up for decision in different courts are also of such various types and have so many peculiarities of their own, that it is almost impossible to lay down how and in what manner the Judge or the Magistrate should express himself. Some of the basic features and characteristics of the judgment which the Judicial officer should bear in mind are briefly set out as under.

17.3. The judgment should ordinarily contain (a) statement of facts, (b) points in dispute, (c) findings on points in dispute on the basis of evidence and documents; and (d) reasons for granting or refusing order/relief.

17.4. Emotion has no place in a judgment which has to be based on facts as presented by the parties in the evidence, oral or documentary. Anything which directly or indirectly aggravates the emotion definitely induces an element of perversity.

17.5. The Court should abstain from harsh or ungenerous criticism of measures taken in good faith by those who bear the responsibility of the Government.

17.6. A judgment must be calm and balanced and neither should it show prejudice nor sympathy. There should never be any display of emotions or sentiments in the judgment. A Judge neither rewards virtue nor chastises vice. He only administers even-handed justice between man and man and between a citizen and the State. This cardinal principle should always be remembered while constructing a judgment or the order.

17.7. Judicial Officers should not make sweeping remarks of general nature about any class of people - women, lawyers, politicians, businessmen, landlords, tenants, doctors, moneylenders, policemen, etc. etc.

17.8. The pen of the Judge should be just like the knife of a surgeon which probes into the flesh only inasmuch as it is absolutely necessary for the purpose of the case before it. Disparaging remarks which are not unwarranted by evidence against a person should never be made.

17.9. A judgment should not be based on conjectures and surmises or personal knowledge. It should be based on proper appreciation of evidence on record.

17.10. The language of the judgment should be sober, dignified, restrained and temperate and in no case satirical or factious. Judicial officers should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. They should try to avoid expressions which may attract a comment that the Judge had either made up his mind even before he initiated proceedings or had identified himself with a case to an extent that he was unable to appreciate the case or weigh the evidence before him impartially and without any basis.

17.11. The Courts and Tribunals must refrain from making any observation and remarks regarding personal characters of individuals, particularly of women, unless it is absolutely imperative in deciding the case."

C. CONTENTIONS OF THE RESPONDENT

17. Controverting the aforesaid submissions, Ms. John, learned Senior Counsel appearing for the respondent, addressed the following submissions. It was at the outset submitted that while the prayer for transfer rests on a

purported apprehension of bias, significantly although the various interim orders passed by the Family Judge from time to time were assailed before this Court, no allegations of bias were ever raised prior to the filing of the present petition. Ms. John highlighted the fact that the order of 02 August 2021 clearly evidences that the Family Judge had proceeded to pass the order of restraint after hearing respective counsels who had duly conveyed the agreement of parties to the proposed arrangement of the child not being moved out of the jurisdiction of the Court. Learned Senior Counsel submitted that the order correctly and accurately recorded the events as they transpired in Court. Ms. John submits that the challenge which was raised to the recitals as appearing in that order by the petitioner here was wholly without substance and lacked all credence. It is submitted by learned Senior Counsel that even though the aforesaid order was assailed in subsequent proceedings before this Court, the factum of the order of 02 August 2021 being based on the agreement of parties was never questioned.

18. Ms. John has then referred to the challenge raised by the petitioner to the order of 09 November 2021 and submitted that even here and at least till the present petition for transfer came to be filed, no allegation of bias was ever raised nor did the petitioner ever accuse the Family Judge being in any manner impartial or unfair. It was submitted that in as many as four previous forays which were initiated by the petitioner before this Court, no allegation of bias or impartiality was either averred or asserted by the petitioner. The submission in essence was that the instant petition is merely

an afterthought and based on allegations which are wholly devoid of substance or merit.

19. Ms. John also took the Court through the application which was made and which formed the basis for the passing of the order of 09 November 2021. Referring to the various claims and prayers that were made therein, Ms. John contended that none of them could even remotely be viewed as being liable to be considered or countenanced under the provisions of the PWDV. It was submitted that the nature of the reliefs claimed by the petitioner not only constrained the Family Judge to return the findings as it did in the order of 09 November 2021, those findings were clearly justified in the facts and circumstances of the case. It was submitted that a stray observation as appearing in that order would not warrant the invocation of the powers contained in Section 24 of the Code.

20. It was then submitted that the insinuations cast on the "private meeting" in the chamber of the Family Judge was also wholly unjustified. Ms. John contended that the Family Judge was moved by way of an urgent application of the respondent seeking modification of the order of 15 November 2021. Ms. John would submit that there was no impropriety in the Family Judge granting an audience to the counsel for the respondent. In any case, she submitted that the order ultimately passed on that day cannot possibly and by any stretch of imagination be viewed as having caused any prejudice to the petitioner even remotely. Ms. John highlighted the fact that all that the Family Judge did on that date was to post the application for

consideration on 23 November 2021 thus granting time to the petitioner to respond.

21. It was then submitted that the allegations leveled with respect to acts of forgery committed by the court staff are also wholly specious and cannot even remotely be suggestive of any involvement of the court itself or having any bearing on the conduct of proceedings by the Family Judge. In any case, it was submitted that the entire gamut of allegations leveled by the petitioner here forms subject matter of an administrative enquiry and thus no credence should be placed on the same till such time the enquiry finds substance in the allegation levelled.

22. Ms. John reiterating her submission of wholly unsubstantiated and irresponsible allegations having been leveled against the Family Judge contended that the petitioner has cast unfounded aspersions on the Family Judge when it is alleged that her applications could not be identified on a particular date. It was submitted that regard must be had to the indubitable fact that courts across the country were functioning under tremendous pressure during the pandemic working tirelessly to adopt to new technologies and discharging their functions on many occasions with the aid of skeletal staff. In view of the above, Ms. John would submit that no adverse inference can possibly be drawn from the fact that the Family Judge was unable to trace out the application of the petitioner on a particular day.

23. Ms. John further submitted that the application for issuance of directions under Section 18-24 of the PWDV was rightly negatived and

turned down by the Family Judge bearing in mind the fact that the petitioner had failed to even prima facie establish a case of domestic violence or abuse. It was submitted that as was rightly recorded by the Family Judge in the order of 09 November 2021, the solitary allegation which was levelled was neither proved nor substantiated with the petitioner having woefully failing to establish that the latch of a particular door had been forcibly broken. It was submitted that no allegation of physical abuse was also established. Viewed in the aforesaid backdrop, Ms. John would submit that the application was rightly rejected by the Family Court. It was submitted that once the petitioner had abjectly failed to establish an allegation of domestic abuse, there was no occasion for the Family Judge to consider the grant of any protective orders under the PWDV.

24. Proceeding to the address the Court then on the principles which must govern the trial of allegations of bias, Ms. John submitted that allegations of bias leveled against a judge of the Court are liable to be with great circumspection and care. Learned Senior Counsel submitted that the allegation of bias cannot rest on mere surmises or conjunctures. It was further her submission that those allegations in any case should not be lightly accepted at the hands of a disgruntled litigant. According to Ms. John, an adverse decision rendered by a particular court cannot constitute a ground to sustain an allegation of bias. Ms. John in support of her submission firstly drew the attention of the Court to the following

observations as made by the Kerala High Court in **Abraham Thomas Puthooran vs. Manju Abraham and Another**[6]**:-**

> "31. The allegation of bias has to be dealt with extreme caution and circumspection because its truth and falsity is divided by a narrow margin. There must appear to a real likelihood of bias and not mere surmises or morbid suspicions, to transfer a case on the above ground as observed in Menaka Sanjay Gandhi, R. Balakrishna Pillai, Harita Sunil Parab and Berely (supra). An allegation of bias against a Presiding Officer is a matter of grave concern and a serious issue. If the allegation is true, it calls for immediate transfer of the case and with consequences to follow. If it is not, it has to be sternly dealt with an iron hand, otherwise all and sundry will start casting aspersions against the Presiding Officers, without any foundation or basis, which will shatter the confidence of the Presiding Officer and rattle the justice delivery system. To accept an allegation of bias, without substantial material puts the credibility and the independence of judiciary at stake."

25. To further elaborate upon the principles that would apply, Ms. John also referred to the decision of the Karnataka High Court in **Sangeetha S. Chugh v. Ram Narayan**[7]**:-**

> "6. I have heard the Counsel for the petitioner as also the respondents and also perused the letter from the Presiding Officer regarding the allegations. It is patently clear that this is an attempt on the part of the petitioner to protract the case. None of the allegations made in the Transfer Petition can be substantiated. The transfer of the case is sought on four grounds: (i) the case is being listed to near dates unlike in other cases; (ii) remarks made by the Presiding Officer from the Bench; (iii) refusal to summon documents desired by the petitioner; and (iv) likelihood of the Presiding Officer being influenced by the respondents. As regards the 1st point, it is clear from the explanation offered by the Presiding Officer that he has not shown any undue preference to the case. All he seems to have intended to convey was that since in the old cases there is no scope of any sort of settlement, that will have to be disposed off on merits. To this expression, no motive can be attributed. Further, such allegation can be made against any Presiding Officers. As regards

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[6] 2021 SCC OnLine Ker 3564

[7] 1994 SCC OnLine Kar 274

the second point, in the course of the trial of any case, when the matter is being heard, the Presiding officer might express some opinions so as to elicit further information from the contestant. It does not mean that he would have made up his mind with respect to the decision to be taken in the case. When discussions are held and arguments are heard, a Presiding Officer is entitled to disclose his mind so that the respective Counsel can follow the trend of the Court and offer an appropriate explanation or reply. Such discussion only helps to clear the disputed questions in the case. It is too much to say that if any statements are made, it means that the Presiding officer has made up his mind with respect to the decision in the case. If this be the position, no case can be heard by any Court. It cannot be expected that the Judges should be silent without expressing any opinion. A sphinx like attitude is not expected from the Presiding Officer especially when he is trying a Matrimonial Case or litigation between very near relation. There should be an effective discussion, an effective attempt to conciliate and effective attempt to clarify the misunderstanding so that the disputes can be settled or a just and proper decision can be taken by the Presiding Officer. If in that process, the Presiding Officer makes any comments on merits of the case, it cannot be misunderstood as an expression of the decision. As regards the order refusing to summon a document, it is a Judicial exercise of power. That cannot be a ground for transfer."

26. Reliance was also placed on the following principles as enunciated in a decision of the Allahabad High Court in **Neha Bhardwaj vs. Pankaj Bharadwaj**[8]:-

"I have heard learned Counsel for the applicant at length and perused the record. Whatever has been urged to infer that the Presiding Officer of the Family Court is biased, is in the realm of conjecture and a manifestation of the general attitude disrespect towards the Court, that appears to be fostered on ill found notions. Merely because the Court proceeds with a case expeditiously or turns down a motion interlocutory, illegally, it does not mean that the Court is biased against a particular litigant. In this case, if the transfer application were allowed, this Court would be inferring a bias against the Presiding Officer or at least, approving of a reasonable apprehension in the mind of the applicant about bias, without there being a shred of evidence to show any kind of a bias inferable from circumstances of any consequence. Adverse orders are no basis to infer personal bias of a Judge. If this ground were to be permitted, the wheels

[8] Transfer Application (Civil) No.459/2021

of justice would come to a standstill. This Court does not find any good ground to permit the transfer that the applicant seeks."

27. Ms. John also referred for the consideration of the Court the following principles as enunciated by this Court in **Neetu Singh & Anr vs. Rajeev Saumitra[9]:-**

"10. In the case Rajkot Cancer Society v. Municipal Corporation Rajkot AIR 1988 Guj. 63, it was held as under:

'It must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another 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.'

11. In the case Jagatguru Shri Shankaracharya Jyotish Peethadhiswar v. Shri Swaini Swaroopanand Saraswati AIR 1979 MP 50, it was held as under:

'Another factor that has to be taken into consideration is the interest of justice. A case has to be transferred if there is reasonable apprehension of a party to a suit that he might not get justice in the Court where the suit is pending. This may be because the trial Judge is prejudicial or because there in the surcharged atmosphere no fair trial is possible at that place. This Court in Raghunandan v. G. H. Chawla 1963 MPLJ 117 has held as under:—

"The learned District Judge lost sight of the well recognised position that the question whether the apprehension entertained by an applicant that he might not get justice at the hands of a particular Judge, was a reasonable apprehension or not had to be determined on such material as was on

[9] 2015 SCC OnLine Del 13416

> record and on the explanation of the Judge concerned. The onus of establishing sufficient grounds for transfer lay very heavily on the applicant. No account of imaginary suspicion or capricious belief could be permitted to be raised as a ground for transfer. The view, in the circumstances on record, taken by the learned District Judge was as capricious as the feeling of the applicant seeking transfer."
>
> 12. When the case of the petitioners is examined in the light of above principles, I am of the considered view that this transfer petition deserves dismissal as from the record it is not borne out that there is any bias against the petitioners or the apprehension of the petitioners is genuine. In fact the learned ADJ-02, North during trial of the first suit No. 78/2015 assigned to that Court had exercised the discretion at two stages in favour of the petitioners as under : -
>
> (i) By not proceeding ex parte when they failed to appear despite service either in person or through counsel;
>
> (ii) When the written statement and reply to the injunction application though not filed within the stipulated period, the learned ADJ-02, North exercised the judicial discretion in their favour by condoning the delay in filing the written statement and reply. Thus, giving an opportunity to the petitioners to contest the case on merits."

28. It was also argued that mere use of harsh language in a judicial order would not constitute sufficient ground to sustain an allegation of a reasonable apprehension of bias. Reliance in this respect was placed upon the following observations as appearing in **T.P. Padhmaja vs. Mr. Kumarakrishnan**[10]**,** a judgment rendered by the Madras High Court: -

> "8. It is a settled principle that transfer can be ordered only when the parties have the reasonable apprehension and that justice would be denied to her. Any remarks by the Presiding Officer including adverse remarks during the hearing regarding the merits of the case are not valid grounds for transfer. A case cannot be transferred on mere allegation against the Presiding Officer of the Court. The fact that the party has suspicion in

[10] 2017 SCC OnLine Mad 12052

this regard would not constitute the valid ground. Mere apprehension on petitioner's imaginary grounds cannot be accepted for the purpose of transfer in this case. In the case on hand, the petitioner is the one who has chosen the forum by seeking transfer earlier from Subordinate Court, Tambaram. At her instance, the matter was brought to Family Court, Villupuram and the learned Judge has tried to mediate between the parties. So far as Family Courts are concerned, it is also duty of the Presiding Officers to make earnest endeavour to settle the matter. Any such effort made by the Presiding Officer in this regard to settle the matter, shall not interpreted by the parties as a coercive steps to come to some terms and on that basis, the case pending before the Court cannot be transferred to another Court. Admittedly, both the petitioner and the respondent are the residents of Villupuram and it is convenient for them to appear and conduct their case. The case being matrimonial dispute, only the Family Court has got the jurisdiction to try the same. The cross examination of P.W. 1 is also over and it is now posted for cross examination of P.W. 2, who is the father as well as the Power of Attorney of the respondent herein.

9. Normally in matrimonial proceeding filed by the husband against the wife, convenience of the wife would be the primary consideration. In this case also earlier it was transferred to Villupuram to suit the convenience of the petitioner/wife. From the reading of the affidavit also, this Court is unable to see any bias as alleged. Only in the argument, serious allegations against the Presiding Judge impugning his fairness and impartiality are made. In the absence of any Special instances of bias, the Presiding officer cannot be attributed with bias. Merely because harsh language is used by the Presiding officer, it will not be a ground for transfer. As already trial has commenced and the petitioner's evidence is also over, it would be appropriate to continue the evidence with the same Judge as it would be easy for the Presiding Officer to notice the demeanor of the witnesses which would be helpful in deciding the case. Therefore, merely because the interim orders passed by the Presiding Officer, went against the petitioner it would not be fair to make allegations against the Presiding Officer and ask for transfer on that ground."

29. It was lastly submitted that the unfounded allegations as leveled by the petitioner here clearly amounts to an abuse of the process of Court and must be dealt with a heavy hand. Ms. John in this regard drew the attention

of the Court to the following principles as laid down by the learned Judge of the Court in **Ankur Mutreja vs. Aviation Employees Cooperative House Building Society Ltd.**[11]

> "18. *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.
>
> 19. "Bias" is defined, in *State of W.B.* v. *Shivananda Pathak* 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."
>
> 20. In *Transport Department* v. *Munuswamy Mudaliar*, 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."
>
> 21. 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.
>
> 22. 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.

[11] 2022 SCC OnLine Del 770

> 23. 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, 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.
>
> 24. I am constrained, therefore, despite the fact that the petitioner appears in person, to dismiss this petition with costs of Rs. 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."

It was submitted that if such unfounded allegations were to be countenanced by courts while considering a petition for transfer, it would not only have a deleterious effect on the judicial system itself, it may also demoralise judicial officers who work tirelessly to discharge functions without fear or favour.

D. THE DECISION OF THE COURT

D.1 PREFACE

30. Before proceeding to rule on the rival submissions noticed above, it would be apposite to pause here and articulate certain fundamental precepts which would guide and inform the decision of this Court. It would firstly be necessary to enunciate the special role that a Family Judge is obligated to discharge as distinct from the general role of an adjudicator. More fundamentally, the question posited in this petition requires the Court to briefly notice the essential qualities of a judge/adjudicator and the tests as propounded by our courts in relation to an apprehension of bias.

D.2 ROLE OF THE FAMILY JUDGE

31. It must at the outset be acknowledged that as family jurisprudence has progressed over time, the Family Judge is no longer viewed as one who is to act in the capacity of a mere *"fault finder"*. Family disputes are no longer liable to be viewed as purely adversarial. Our Courts have over time and as society has evolved over the ages throwing up new challenges along the way, unequivocally recognised the multi-faceted role that a Family Judge is called upon to perform today including that of facilitator, counsellor, mediator, taking a pro-active role in exploring and striving to find common ground, kindle the hope of rapprochement and guide parties towards finding closure to disputes. Marital disputes thus require to be resolved with the Family Judge adopting a more immersive resolution process. The Family Judge is thus today obliged to don a more collaborative robe and not approach the *lis* as just another legal dispute that arrives before a court for resolution. This unique function which the Family Judge discharges is required to be approached with empathy bearing in mind that the problem placed before it is not merely another legal conflict but one that deals with the complete breakdown of a family impacting not just the immediate parties to the dispute but various others who are seared by the pall of discord that follows. It thus places the Family Judge under the added responsibility of approaching parties and the issues that arise for determination with compassion, guiding parties through the entire process in the hope that a just solution would avoid an irretrievable breakdown of the family itself.

D.3 THE MANTLE OF THE JUDGE/ADJUDICATOR

32. More fundamental than the aforesaid introduction is the necessity to reiterate the traditional role that a Judge is obliged to discharge. Parties approach courts based on the immense trust and faith expressed and envisioned in the system itself. The Judge representing the face of the court system must thus appear to be just, even handed, independent and neutral. Neutrality is one of the fundamental attributes of the justice system. This requires the Judge to consider and weigh each utterance, every word forming part of the decision ensuring that it embodies and conveys a sense of fairness and neutrality having informed the decision-making process. The decision of the Court represents the voice of the court itself charged with discharging the divine function of rendering judgment. The observations forming part of the judgment must not therefore give the impression of being based on personal assumptions, biases or preconceived notions. Similarly, the observations as contained in the decision must not have the potential to sully the person or character of a litigant. The language of the judgment must necessarily be tempered by restraint and moderation. A judgment of a court of law cannot become a blistering diatribe against a party or its cause.

33. The voice of a Judge must be the voice of prudence, judiciousness and sobriety. A Judge must consequently eschew from entering strident observations which may tend to impinge upon the primordial requirements of impartiality and fairness. While it may be open for Courts to express a doubt about the bona fides of a particular litigant or the motives underlying

an action, that too would not warrant virulent observations being made. In any case, a judgment should never transgress the well-established and inherent limitation of not being viewed as an attack on the personal character of a party before the court. Similarly, while an action may be misconceived, ill-advised or even wholly unsustainable in law, that would also not justify the making of scathing remarks which may convey the impression that the judge let extraneous considerations cloud the overarching and fundamental requirement of being impartial and unprejudiced. It is when the language of the decision tends to convey a departure of the decision maker across the Rubicon of remaining dispassionate, fair and even handed that the question of a reasonable apprehension or a real danger of bias arises. The sobriety which must inform a judicial decision was elaborately explained by two learned Judges of this Court in **Syed Ahmed Bukhari Vs. The State:-**

> "19. In the famous case of *L. Banwari lal* v. *Kundan Cloth Mills Ltd.*, (2) AIR 1973 Lahore 527, Skemp. J. observed that reflections on the conduct of the party should also be in sober language. The court observed as under:
>
> "It may be necessary for a Judge or a Magistrate to pass reflections upon the conduct or honesty of a party or the truthfulness of a witness: when this is necessary that should be done in sober and becoming language. It is never necessary to make remarks about a whole class of society who are not before the Court."
>
> 20. Judicial officers must bear in mind that it is hardly necessary for them to make remarks about class of society such as Parliament. Executive, Legislature or Judiciary as a whole. In any case, disparaging remarks which are not warranted by evidence or material on record should never be made.
>
> 21. The court should be extremely careful and cautious before making general comments and observations regarding highly sensitive, religious

and communal material which have the potentialities of arousing the public sentiments.

22. The Supreme Court in *State of M.P.* v. *Nandlal Jaiswal*, (3) (1986) 4 SCC 566 : AIR 1987 SC 251, observed:

"Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible, and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so they may do considerable harm and mischief and result injustice."

24. We are attempting to reiterate and restate some of the basic features and aspects which should be borne in mind by the Judicial Officers, while framing or constructing the judgments and orders.

IV. *Emotion has no place in a judgment which has to be based on facts as presented by the parties in the evidence, oral or documentary*. Anything which directly or indirectly aggravates the emotion definitely induces an element of perversity.

V. *The Court should abstain from harsh or ungenerous criticism of measures taken in good faith by those who bear the responsibility of the Government.*

VI. *A judgment must he calm and balanced and neither it should show prejudice nor sympathy. There should never he any display of emotions or sentiments in the judgment. A Judge neither rewards virtue nor chastises vice. He only administers even-handed justice between man and man and between a citizen and the State*. This cardinal principle should always be, remembered while constructing a judgment or the order.

XV. *Judicial Officers should not make sweeping* remarks of general *nature about any class of people* women, lawyers, politicians, businessmen, landlords, tenants, doctors, moneylenders, policemen, etc. etc.

XVII. The pen of the Judge should be just like the knife of a surgeon which probes into the flesh only as much as is absolutely necessary for the purpose of the case before it. *Disparaging remarks which are not warranted* by *evidence against a person should never be made.*

> XVIII. A *judgment should not be based on conjectures and surmises or personal knowledge*. It should be based on proper appreciation of evidence on record.
>
> XXIII. The *language of the judgment should be sober, dignified, restrained and temperate and in no case satirical or factious*. Judicial officers should see that their pronouncements are judicial in nature and do not normally depart from sobriety, moderation and reserve. They should refrain from being sarcastic in their judgments. They should try to avoid expressions which may attract a comment that the Judge had either made up his mind even before he initiated proceedings or had identified himself with a case to an extent that he was unable to appreciate the case or weigh the evidence before him impartially and without any bias.
>
> XXIV. *Personal sentiments and personal views regarding religions, institutions, and political parties be avoided*. The court must be very careful before making remarks which gravely affect the honesty, reputation and good name of the witness or any individual. In any case, it is not fair to make any remarks based on conjectures and surmises.''

34. The Court also bears in mind the significant observation made by the Supreme Court in **A.M. Mathur** with the learned judges of that court reminding us that restraint and humility of function must remain a constant theme in the life of a judge. Of equal significance are the principles enunciated by the Bombay High Court in **Sonibai Nathu Kuwar** with it being emphasised that disparaging remarks should be avoided and that the language of the decision in any case should "in no case be satirical and factious".

D.4 JUDICIAL BIAS

35. The issue of judicial bias was lucidly explained by the Supreme Court in **State of Punjab Vs. Davinder Singh Bhullar**[12]. Noticing the

[12] 2011 (14) SCC 770

decisions rendered by our courts earlier on the subject, the Supreme Court observed thus: -

> "25. In respect of judicial bias, the statement made by Frank, J. of the United States is worth quoting:
>
> "If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions…. Much harm is done by the myth that, merely by … taking the oath of office as a Judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine." (*Linahan, In re* [138 F 2d 650 (2nd Cir 1943)])
>
> (See also *State of W.B.* v. *Shivananda Pathak* [(1998) 5 SCC 513 : 1998 SCC (L&S) 1402] , SCC p. 525, para 29.)
>
> 26. To recall the words of Mr Justice Frankfurter in *Public Utilities Commission* v. *Pollak* [96 L Ed 1068 : 343 US 451 (1952)] , L Ed p. 1079 : US at p. 466:
>
> "The Judicial process demands that a Judge moves within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that, on the whole, Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted."
>
> 27. In *Bhajan Lal* v. *Jindal Strips Ltd.* [(1994) 6 SCC 19] , this Court observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. The apprehension of bias must be reasonable i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The Court held as under : (SCC pp. 26-27, para 23)
>
> > "*23.* Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'sua causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a

> proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one."
>
> 28. The principle in these cases is derived from the legal maxim—*nemo debet esse judex in propria sua causa*. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide *Rameshwar Bhartia* v. *State of Assam* [AIR 1952 SC 405 : 1953 Cri LJ 163] , *Mineral Development Ltd.* v. *State of Bihar* [AIR 1960 SC 468] , *Meenglas Tea Estate* v. *Workmen* [AIR 1963 SC 1719] and *Transport Deptt.* v. *Munuswamy Mudaliar* [1988 Supp SCC 651 : AIR 1988 SC 2232].
>
> 29. The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide *A.U. Kureshi* v. *High Court of Gujarat* [(2009) 11 SCC 84 : (2009) 2 SCC (L&S) 567] and *Mohd. Yunus Khan* v. *State of U.P.* [(2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180])
>
> 30. In *Manak Lal* v. *Prem Chand Singhvi* [AIR 1957 SC 425] this Court while dealing with the issue of bias held as under : (AIR p. 430, para 6) Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary…. What is relevant is the reasonableness of the apprehension in that regard in the mind of the appellant."

36. The ratio of those decisions was enunciated by the Supreme Court in paragraphs 31 and 36 of the report which are extracted hereinbelow: -

> "31. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice i.e. the Judge has to act

fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial *coram non judice*. Therefore, the consequential order, if any, is liable to be quashed. (Vide *Vassiliades* v. *Vassiliades* [AIR 1945 PC 38] , *S. Parthasarathi* v. *State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] and *Ranjit Thakur* v. *Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] .)

36. Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order, etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial *coram non judice*."

37. The principles which would govern a challenge based on an allegation of bias were again explained by the Supreme Court in **Union of India Vs. Sanjay Sethi [2013 (16) SCC 116]** in the following terms: -

"35. In *Manak Lal* v. *Prem Chand Singhvi* [AIR 1957 SC 425] the Court has stated thus: (AIR p. 429, para 4)

"*4*. … It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

39. In *Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant* [*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 : 2001 SCC (L&S) 189] , the Court referred to a passage from the view expressed by Mathew, J. in *S. Parthasarathi* v. *State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] : (*Girja Shankar Pant case*

[*Kumaon Mandal Vikas Nigam Ltd.* v. *Girja Shankar Pant*, (2001) 1 SCC 182 : 2001 SCC (L&S) 189] , SCC pp. 198-99, para 28)

"*28.* … '*16.* The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real 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. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [*see per* Lord Denning, M.R. in *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon* [(1969) 1 QB 577 : (1968) 3 WLR 694 : (1968) 3 All ER 304 (CA)] (WLR at p. 707].' (SCC p. 465, para 16)"

44. In *Chandra Kumar Chopra* v. *Union of India* [(2012) 6 SCC 369 : (2012) 2 SCC (L&S) 152] it has been held that: (SCC p. 379, para 25)

"*25.* … mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum."

38. The ultimate conclusion stands embodied in paragraph 51 of the report which is extracted hereinbelow: -

"51. The principle that can be culled out from the number of authorities fundamentally is that the question of bias would arise depending on the

facts and circumstances of the case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination. While dealing with the plea of bias advanced by the delinquent officer or an accused a court or tribunal is required to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters, for the challenge of bias, when sustained, makes the whole proceeding or order a nullity, the same being *coram non judice*. One has to keep oneself alive to the relevant aspects while accepting the plea of bias. It is to be kept in mind that what is relevant is actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias. To adjudge the attractability of plea of bias a tribunal or a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition."

39. Both the aforesaid decisions had also noticed the decision of the Court of Appeal in **Locabail (U.K.) Ltd. Vs. Bayfield Properties 2000 QB 451].** In Locabail the Court of Appeal held: -

"...25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (KFTCIC v. Icori Estero SpA (Court of Appeal of Paris, 28 June 1991, International Arbitration Report. Vol. 6 #8 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the

public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakauta v. Kelly (1989) 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be. We do not consider that waiver, in this context, raises special problems (Shrager v. Basil Dighton Ltd. [1924] 1 KB 274 at 293; R. v. Essex Justices, ex parte Perkins [1927] 2 KB 475 at 489; Pinochet (No. 2), at 285; Auckland Casino, above, at 150, 151; Vakauta v. Kelly, above, at 572, 577). If, appropriate disclosure having been made by the judge, a party raises no objection to the judge hearing or continuing to hear a case, that party cannot thereafter complain of the matter disclosed as giving rise to a real danger of bias. It would be unjust to the other party and undermine both the reality and the appearance of justice to allow him to do so. What disclosure is appropriate depends in large measure on the stage that the matter has reached. If, before a hearing has begun, the judge is alerted to some matter which might, depending on the full facts, throw doubt on his fitness to sit, the judge should in our view enquire into the full facts, so far as they are ascertainable, in order to make disclosure in the light of them. But if a judge has embarked on a hearing in ignorance of a matter which emerges during the hearing, it is in our view enough if the judge discloses what he then knows. He has no obligation to disclose what he does not know. Nor is he bound to fill any gaps in his

> knowledge which, if filled, might provide stronger grounds for objection to his hearing or continuing to hear the case. If, of course, he does make further enquiry and learn additional facts not known to him before, then he must make disclosure of those facts also. It is, however, generally undesirable that hearings should be aborted unless the reality or the appearance of justice requires that they should.

40. For the sake of completeness it may be noted that the test of real danger which was noticed in Locabail has since been diluted by the House of Lords in **Porter Vs. Magill**[13]**.** Lord Hope in his speech explained the principles that would govern thus: -

> **"**100**.** The "reasonable likelihood" and "real danger" tests which Lord Goff described in *R v Gough* have been criticised by the High Court of Australia on the ground that they tend to emphasise the court's view of the facts and to place inadequate emphasis on the public perception of the irregular incident: *Webb v The Queen* (1994) 181 CLR 41, 50, per Mason CJ and McHugh J. There is an uneasy tension between these tests and that which was adopted in Scotland by the High Court of Justiciary in *Bradford v McLeod* 1986 SLT 244. Following Eve J's reference in *Law v Chartered Institute of Patent Agents* [1919] 2 Ch 276 (which was not referred to in *R v Gough*), the High Court of Justiciary adopted a test which looked at the question whether there was suspicion of bias through the eyes of the reasonable man who was aware of the circumstances: see also *Millar v Dickson* 2001 SLT 988, 1002–1003. This approach, which has been described as "the reasonable apprehension of bias" test, is in line with that adopted in most common law jurisdictions. It is also in line with that which the Strasbourg court has adopted, which looks at the question whether there was a risk of bias objectively in the light of the circumstances which the court has identified: *Piersack v Belgium* (1982) 5 EHRR 169, 179–180, paras 30–31; *De Cubber v Belgium* (1984) 7 EHRR 236, 246, para 30; *Pullar v United Kingdom* (1996) 22 EHRR 391, 402–403, para 30. In *Hauschildt v Denmark* (1989) 12 EHRR 266, 279, para 48 the court also observed that, in considering whether there was a legitimate reason to fear that a judge lacks impartiality, the standpoint of the accused is

[13] [2002] 2 AC 357

important but not decisive: “What is decisive is whether this fear can be held objectively justified.”

101 The English courts have been reluctant, for obvious reasons, to depart from the test which Lord Goff of Chieveley so carefully formulated in *R v Gough* . In *R v Bow Street Metropolitan Stipendiary Magistrate, Ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119, 136A–C Lord Browne-Wilkinson said that it was unnecessary in that case to determine whether it needed to be reviewed in the light of subsequent decisions in Canada, New Zealand and Australia. I said, at p 142F–G, that, although the tests in Scotland and England were described differently, their application was likely in practice to lead to results that were so similar as to be indistinguishable. The Court of Appeal, having examined the question whether the “real danger” test might lead to a different result from that which the informed observer would reach on the same facts, concluded in *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, 477 that in the overwhelming majority of cases the application of the two tests would lead to the same outcome.

102 In my opinion however it is now possible to set this debate to rest. The Court of Appeal took the opportunity in *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700 to reconsider the whole question. Lord Phillips of Worth Matravers MR, giving the judgment of the court, observed, at p 711A–B, that the precise test to be applied when determining whether a decision should be set aside on account of bias had given rise to difficulty, reflected in judicial decisions that had appeared in conflict, and that the attempt to resolve that conflict in *R v Gough* had not commanded universal approval. At p 711B–C he said that, as the alternative test had been thought to be more closely in line with Strasbourg jurisprudence which since 2 October 2000 the English courts were required to take into account, the occasion should now be taken to review *R v Gough* to see whether the test it lays down is, indeed, in conflict with Strasbourg jurisprudence. Having conducted that review he summarised the court's conclusions, at pp 726–727:

“85. When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to

> conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."
>
> **103** I respectfully suggest that your Lordships should now approve the modest adjustment of the test in *R v Gough* set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to "a real danger". Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

41. The decision in **Porter** thus establishes that the jurisprudence appears to have fallen in line with the view adopted by courts in our country. While dealing with challenges like the one raised in this petition it is relevant to recall the pertinent observations entered in **Kulwinder Kaur** where it was observed that if circumstances and facts of a particular case tend to establish that a litigant was unlikely to get a fair trial, it is not just the power but the duty of the court to make an appropriate order transferring proceedings. It is equally important to bear in mind, and was rightly contended by Ms. John, that allegations of bias must be evaluated with extreme caution and circumspection. Ms. John aptly commended for the consideration of the Court the note of caution as entered by the Kerala High Court in **Abraham Thomas** that the test of real likelihood of bias would not be satisfied on allegations which are merely a surmise or a "morbid suspicion". The Court also deems it appropriate to note the reiteration of the well settled precept of mere adverse orders not being

sufficient to invoke the power of transfer as explained by the Allahabad High Court in **Neha Bharadwaj**. In the considered view of this Court, it is the aforesaid factors and aspects which must be placed in the balance in order to form an opinion whether a transfer is warranted in the facts of the present case.

42. From the principles enunciated in the decisions noted above it follows that an allegation of bias would have to be evaluated based on the test of a reasonable apprehension of bias. **Davinder Singh Bhullar** expressed the test as being whether a reasonable person would have thought that the adjudicator was predisposed to decide the matter in a particular way. The Supreme Court further observed that "mere appearance of bias" and not "actual bias" would be sufficient to vitiate the judgment. Emphasis was again laid on the "reasonableness" of the apprehension as being the determinative factor. In **Sanjay Sethi**, the Supreme Court observed that in order to uphold a challenge to a judgment on the ground of bias, it must be found on the facts of that case that the apprehension be established to be not based on mere imagination but on a reasonable doubt that the decision was affected by bias.

43. What follows from the aforesaid discussion is that bias is not an issue which is required to be proved as existing in fact. What is important to consider is whether the facts could give rise to an apprehension of bias. That apprehension can neither be founded on imagination nor can it rest merely on the fact that an adverse decision was rendered. The apprehension would have to be tested from the viewpoint of an ordinary person and

whether the material would legitimately give rise to a doubt of whether the judge or the adjudicator would have the ability to decide impartially and fairly.

44. Tested in light of the principles noticed above, the Court is called upon to consider whether the conduct of proceedings and the various orders passed in the present matter by the Family Judge would constitute sufficient ground to opine that the apprehension of bias as expressed by the petitioner is reasonable and sustainable in law.

D.5 WHETHER JUDICIAL BIAS ESTABLISHED

45. It must be borne in mind that in the facts of the present case, there is no allegation of a direct pecuniary or other interest of the Family Judge in the proceedings. What is alleged is that the procedure as adopted and the orders passed would establish or at least constitute a reasonable ground to apprehend prejudice. As held hereinabove, a judge or an adjudicator while presiding over a *lis* is obliged to decide the same in an unbiased manner, fairly and impartially. Of equal significance are the various orders or observations that may be made in the course of those proceedings and whether they could constitute a ground to reasonably apprehend that the judge would no longer be able to rule on the rights of parties impartially. It is only when the sheen of neutrality which must imbue the decision-making process at all times is irretrievably shattered that the allegation of bias would sustain.

46. Viewed on the touchstone of the above principles, it may be noted that the observations of the Family Judge as appearing in the order of 11 August 2021 clearly would not meet the threshold as enunciated. The mere fact that the Family Judge chose to observe that courts are not powerless and do not need to seek concession from parties or counsels must be viewed in light of the prayer of the petitioner seeking rectification of the record. The Family Judge undoubtedly is the master of the record. Recitals as appearing in judicial orders are not liable to be opened or reviewed based on a bald allegation of parties. However, the Court cannot lose sight of the admitted fact that the remedy of rectification is duly recognised and one which a party is entitled to invoke if circumstances so warrant. The order of 02 August 2021 embodied the decision of the Family Judge to not permit the child to leave the jurisdiction of the Court. That order prefaces that direction with the Family Judge observing that it was being made after due deliberation. The Family Judge has further noted in the order of 11 August 2021 that counsels for respective parties had agreed to the aforesaid arrangement. This recital as appearing in that order was neither questioned nor assailed before this Court. Similarly, the mere use of the word contemptuous, while perhaps intemperate, would also not sustain an apprehension of bias. It appears to have been made solely to place parties on caution of the well settled principle that recitals appearing in judicial orders of what transpires in court are sacrosanct and cannot be lightly reopened or questioned. All that may be observed in this respect is that while the Family Judge may have overstepped in choosing to describe the

application as contumacious, this observation when viewed independently and divorced from the contents of the subsequent orders passed would not justify transfer.

47. The order of 28 October 2021 was referred to by Ms. Anand to highlight that the Family Judge incorrectly recorded that it was the petitioner who was describing the child borne out of wedlock as being illegitimate. This observation of the Family Judge would appear to be a mere factual inaccuracy since the issue of illegitimacy appears to have been raised in the context of the father disavowing the marriage between the parties itself. The respondent being the putative father had not at any stage doubted the paternity of the child. The petitioner may have raised the issue of illegitimacy as being the necessary fallout and consequence of the father denying the factum of marriage itself. However, this in itself would not constitute sufficient ground to sustain an apprehension of bias.

48. The submissions addressed in the backdrop of a perceived failure on the part of the Family Judge to enforce production of documents, calling upon the respondent to file replies, the allegation of forgery committed by court staff also do not impress this Court to hold in favour of the petitioner. These allegations are wholly specious and merit no further consideration. Regard must be had to the fact that it is for the Family Judge to control proceedings in each matter as per its discretion and sound judgment. It is for the Presiding Officer to prioritise issues in any litigation. Similarly, the allegation of forgery was laid against the court staff. It was not the case of the petitioner that the Family Judge was a party to the alleged act. Likewise,

while much stress was laid on the fact that the petitioner's miscellaneous applications were not being taken up, that allegation also fails to move this Court. It must be borne in mind that the proceedings were being conducted while the pandemic was raging. Courts and staff attached to it were working under tremendous pressures. Our court system was adopting to technologies seldom used or deployed before. Viewed in that light it is evident that the allegations levelled on this score are also without merit.

49. The Court then takes up for consideration the allegation of a private meeting in the chambers of the Family Judge which took place on 15 November 2021. It is alleged that although this was not a date fixed in the matter, the lawyer for the petitioner started receiving phone calls from the court staff of the Family Judge for appearing before it urgently. It is further alleged that since the main counsel could not join via the video conferencing link, a colleague was requested to attend the proceedings. It is asserted that the colleague found that counsel for the respondent was sitting in the chambers of the Family Judge. The record however bears out that the respondent appears to have moved an application seeking clarification with respect to terms of visitation and sought urgent orders thereon. It is this application when moved in court which appears to have led to an effort being made by court staff to contact counsel for the petitioner. In any case as the order sheet bears out, only notices were issued on that application and the matter posted for 23 November 2021. All that may be observed in respect of this incident is that perhaps it may have been more appropriate

for the Family Judge to have met counsels for respective sides together and thus avoided the insinuations which are now made.

50. That takes the Court to the order of 9 November 2021 and which formed the major bone of contention inter partes. The Court has already extracted the observations as made by the Family Judge in that order. As would appear from a perusal of the order when read in its entirety, the Family Judge principally came to hold that the prayers and the reliefs as claimed would not sustain under the provisions of the PWDV Act. According to the Family Judge, the reliefs as framed would tantamount to granting reliefs not even contemplated under the said enactment. The Family Judge proceeded to observe that the dispositions made by the respondent were liable to be viewed as being in the larger interests of the business interests of the group of which he was a mere constituent. It becomes relevant to note that this Court is clearly not called upon to consider or answer the question whether the reliefs claimed would be sustainable under the PWDV Act. It thus refrains from entering any observation with regard to the sustainability of the prayers made and whether they would fall within the parameters of protective orders as contemplated under Sections 18-24 of the PWDV Act.

51. However, and while it would have been advisable for the Family Judge to pause here itself, it has proceeded to make certain scathing remarks against the character of the petitioner here. The Family Judge has used expressions such as *"blackmail"* and *"extortion"* at more than one place. The Family Judge observed that the application in its opinion was not

just an attempt to blackmail the respondent but also to extort money from the respondent. It then went on to observe that the application was an attempt to not only blackmail the respondent but also his family members. The Family Judge proceeded to observe that not only had the petitioner chosen to claim everything "under the sky", the application in essence was only a *"blackmailing tactic"*. It is here that the Family Judge appears to have lost sight of the imperative necessity of judicial decisions being compliant with the standards of sobriety and restraint which are expected. The expressions used to describe the claim of the petitioner can be legitimately recognised as giving rise to a reasonable doubt arising on whether the Family Judge would be able to maintain the standards of neutrality as necessitated. The vitriolic and caustic remarks entered would give rise to a reasonable apprehension of whether the Family Judge would be in a position to dispassionately evaluate the claims of the petitioner that have or may be raised in the future.

52. It becomes pertinent to note that the language employed by the Family Judge was neither necessary nor imperative for ruling on the cause which was raised. They would however imbed a reasonable apprehension and doubt with respect to the neutrality of the particular Family Judge. That reasonable apprehension would continue to fester and sully the sanctity of proceedings that may ensue before the Family Court even in the future. It is pertinent to note that the foundation of this petition is not a stray oral observation that may have been attributed to the Family Judge but observations and expression of a definitive opinion appearing in a judicial

order. Those remarks did not stand restricted to the merits of the prayers made but cast serious aspersions on the character of the petitioner itself.

53. It becomes pertinent to recall that judicial bias need not be established or proven as being real or established in fact. The law prescribes the test of bias as being reasonable to sustain a legitimate apprehension. That has to be adjudged from the standpoint of a reasonable person. The nature of the observations made, in the considered view of this Court, would constitute sufficient ground and do meet the test of "reasonable apprehension". The virulent expressions entered would cast a legitimate and reasonable doubt of whether the Family Judge could be still viewed as being able to impartially and dispassionately decide the issues that may fall for its consideration. The credibility of the decision-making process has been sullied by the scathing remarks that came to be made. Any reasonable person when faced with the facts of the present case and the observations made would validly harbour a plausible doubt with respect to the ability of the Family Judge being able to fairly assess the validity of the competing claims of parties. In any case, when tested on the principles noticed above, the petitioner could reasonably apprehend the ability of the Family Judge to undertake a fair and impartial trial of her case. At the cost of appearing to be repetitive it becomes pertinent to observe that bias need not be established as a proven fact. All that is ultimately required to sustain a challenge on the ground of judicial bias is whether when viewed from the standpoint of a reasonably instructed person, the specter would appear to be

justified and thus disqualify the arbiter from proceeding further. The facts of the present case would clearly justify such a conclusion being recorded.

54. Before proceeding further, it would be apposite to evaluate the soundness of the submission of Ms. John who sought to highlight the fact that despite numerous filings before this Court arising out of various orders passed in the course of proceedings by the Family Judge, the petitioner did not raise the issue of bias even once. It is relevant to note that the dispute between the parties here is yet another example of a sordid battle arising out of a fractured matrimonial relationship with parties failing to relent or finding a space for reconciliation. While the Court does convey its fervent hope that they do, as things stand presently, both parties appear to be incessantly litigating with respect to every decision, including those of an interim nature, made by the Family Judge. For the purposes of considering whether the petitioner could be deemed to have waived her right to challenge the authority of the Family Judge, it would have to be found as a matter of fact, that there was a conscious renunciation of the right to object. The Court in this respect deems it apposite to extract the following tests as formulated by the Supreme Court in **Davinder Singh Bhullar** while dealing with the question of waiver: -

> "37. In *Manak Lal* [AIR 1957 SC 425] this Court held that alleged bias of a Judge/official/Tribunal does not render the proceedings invalid if it is shown that the objection in that regard and particularly against the presence of the said official in question, had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of its right to challenge the presence of such official. The Court further observed that : (SCC p. 431, para 8)

"*8.* … waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question."

38. Thus, in a given case if a party knows the material facts and is conscious of his legal rights in that matter, but fails to take the plea of bias at the earlier stage of the proceedings, it creates an effective bar of waiver against him. In such facts and circumstances, it would be clear that the party wanted to take a chance to secure a favourable order from the official/court and when he found that he was confronted with an unfavourable order, he adopted the device of raising the issue of bias. The issue of bias must be raised by the party at the earliest. (See *Pannalal Binjraj* v. *Union of India* [AIR 1957 SC 397] and *P.D. Dinakaran (1)* v. *Judges Enquiry Committee* [(2011) 8 SCC 380] .)

39. In *Power Control Appliances* v. *Sumeet Machines (P) Ltd.* [(1994) SCC 448] this Court held as under : (SCC p. 457, para 26)

"*26.* Acquiescence is sitting by, when another is invading the rights…. It is a course of conduct inconsistent with the claim…. It implies positive acts; not merely silence or inaction such as involved in laches. … The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant…."

40. Inaction in every case does not lead to an inference of implied consent or acquiescence as has been held by this Court in *P. John Chandy & Co. (P) Ltd.* v. *John P. Thomas* [(2002) 5 SCC 90] . Thus, the Court has to examine the facts and circumstances in an individual case.

41. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide *Dawsons Bank Ltd.* v. *Nippon Menkwa Kabushiki Kaisha* [(1934-35) 62 IA 100 : AIR 1935 PC 79] , *Basheshar Nath* v. *CIT* [AIR 1959 SC 149] , *Mademsetty Satyanarayana* v. *G.*

Yelloji Rao [AIR 1965 SC 1405] , *Associated Hotels of India Ltd.* v. *S.B. Sardar Ranjit Singh* [AIR 1968 SC 933] , *Jaswantsingh Mathurasingh* v. *Ahmedabad Municipal Corpn.* [1992 Supp (1) SCC 5] , *Sikkim Subba Associates* v. *State of Sikkim* [(2001) 5 SCC 629 : AIR 2001 SC 2062] and *Krishna Bahadur* v. *Purna Theatre* [(2004) 8 SCC 229 : 2004 SCC (L&S) 1086 : AIR 2004 SC 4282].

42. This Court in *Municipal Corpn. of Greater Bombay* v. *Dr Hakimwadi Tenants' Assn.* [1988 Supp SCC 55 : AIR 1988 SC 233] considered the issue of waiver/acquiescence by the non-parties to the proceedings and held : (SCC p. 65, paras 14-15)

"*14.* In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case. …

15. There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights by Respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition."

43. Thus, from the above, it is apparent that the issue of bias should be raised by the party at the earliest, if it is aware of it and knows its right to raise the issue at the earliest, otherwise it would be deemed to have been waived. However, it is to be kept in mind that acquiescence, being a principle of equity must be made applicable where a party knowing all the facts of bias, etc. surrenders to the authority of the Court/Tribunal without raising any objection. Acquiescence, in fact, is sitting by, when another is invading the rights. The acquiescence must be such as to lead to the inference of a licence sufficient to create rights in other party. Needless to say that the question of waiver/acquiescence would arise in a case provided the person apprehending the bias/prejudice is a party to the case. The question of waiver would not arise against a person who is not a party to the case as such person has no opportunity to raise the issue of bias."

55. From the spate of litigation which has ensued between the parties and the frequent challenges raised, this Court fails to discern a conscious or positive "surrender" to the authority of the particular court or a reiteration

of faith in the Family Judge dispassionately ruling on the competing claims. That this Court has witnessed multiple challenges being laid at the behest of the petitioner and her failure to make an allegation of bias in those proceedings cannot be viewed as a relinquishment of her right to assail the authority of the Family Judge. The petitioner did have the right to assail the orders passed by that particular court. It is that right which was asserted by the petitioner here.

56. However, the fact that those orders were challenged in independent proceedings or that the petitioner failed to raise this issue earlier does not convince this Court to conclude that there was a conscious abandonment of a right to object. It must be remembered that bearing in mind the serious repercussions of acceptance of such a plea, it must not be readily inferred or assumed. There must be strong and cogent evidence which may establish that the party while fully aware of the right to object chose to participate in the proceedings and thus acquiesced in the authority of the court. In challenges like the present, it would have to be found as a matter of fact that there was an expression of faith in the adjudicator and the challenge was raised so belatedly so as to be construed as a conscious surrender and submission to the authority of the adjudicator.

57. The Court also takes into consideration the pleadings in MAT APP [F.C] NO. 2 of 2022 and more particularly Grounds 158 and 204 of that appeal where the disparaging remarks made by the Family Judge in the order of 9 November 2021 were directly assailed and questioned. Those are extracted hereinbelow:-

> "158. FOR THAT the Ld. Trial Court has grossly erred in maligning the Appellant without any documents to support the misplaced observations of the Ld. Trial Court and stating that her Application in exercise of her rights are "only the blackmailing tactic of the Petitioner.
>
> 204. FOR THAT the Ld. Trial Court has committed grave error in casting disparaging comments on the Appellant herein and observing that *"it seems that under the garb of the DV Act, the Petitioner is seeking all the reliefs under the sky. It is only the black mailing tactic of the Petitioner. The forum of the Court cannot be used for blackmailing the other party or as the forum to extort money from the other party. Under the garb of this Application, it seems the Petitioner is not only trying to blackmail the Respondent but this Application is the ploy to extort money from the Respondent" and "the Application is filed only to blackmail the Respondent and his family members" without any evidence in support of these observations."*

These facts when taken in their entirety lead this Court to conclude that it would not only be inappropriate but also imprudent to assume a waiver.

58. Before parting it would be necessary to note that this decision is not liable to be construed as an expression on the ability or the competence of the Family Judge. It is also not liable to be interpreted as being an endorsement of the allegation that the Family Judge was in fact biased. Ultimately, and as is inevitably the case when courts are called upon to rule on allegations like the present, this decision has rested on the principle of a reasonable apprehension of bias and the Court being compelled to have viewed proceedings from the standpoint of a reasonable litigant alone. On an overall conspectus of the aforenoted facts and the conclusions recorded above, the Court is of the view that the prayer for transfer made in this petition would merit acceptance.

59. The Transfer Petition is accordingly allowed. Let the records of G.P. No. 16/2021 pending before the Principal Judge, Family Court, South East, Saket Courts, New Delhi be placed before another Judge of the Family Court. The Principal Family Judge is requested to take appropriate steps in this regard and in light of the directions issued hereinabove.

YASHWANT VARMA, J.

APRIL 19, 2022
Neha/SU