
mis-carriage of justice because the lis inter parties will not be adjudicated upon on merits but in fact will go in default merely because the petitioners did not file the appeal within time.”

(4) If delay is not condoned in filing the appeal, a good cause on merits may get defeated and injustice may get perpetuated by delayed filing of the appeal. There was no gain to the State by the delayed filing of the appeal. Merits of the appeal would not have improved merits of the appeal would remain as they were, if the appeal had been filed in time.

(5) For the reasons given above, this revision is allowed. Delay in filing the appeal is condoned. Dismissal of the appeal on merits by Additional District Judge, Hisar is also set aside. District Judge, Hisar is directed to hear this appeal himself on merit or arrange the hearing of this appeal by another Additional District Judge posted with him at Hisar for decision on merits.

R.N.R.

Before M.L. Singhal, J

NIKHIL SHARMA,—*Petitioner*

versus

A.N. BHARDWAJ & ANOTHER,—*Respondents*

C.M. No. 5660—CII of 1999

11th October, 2000

Code of Civil Procedure, 1908—Ss. 24 & 151—Suit for recovery of damages by a fairly Senior Advocate practising at Ludhiana—Defendants outsiders—Defendants apprehending that because of the local influence wielded by the plaintiff at the Bar the defendants will be at disadvantage at the trial of the suit and the Court may lean in his favour—Whether sufficient ground to transfer the case from one Court to another—Held, yes, on the totality of facts—Justice should not only be done but it should seem to have been done.

Held, that a Senior Advocate practising at Ludhiana and his son are plaintiffs in a suit for recovery. Defendants are out-siders. No wonder, they are put at disadvantage vis-a-vis the plaintiffs so far as the fair trial of the suit at Ludhiana is concerned. Justice should not only be done but it should seem to have been done. There will be no harm to the plaintiffs if the case is transferred from Ludhiana Court to some other Court at Chandigarh in the hope that trial of the case shall be more just and fair at Chandigarh, because at Chandigarh,

neither party shall have an edge over the other. At Ludhiana, plaintiffs may have edge over the defendants.

(Para 11

Kamal Sharma, Advocate, *for the Petitioner.*

J.S. Chaudhary, Sr. Advocate, with Pritam Singh Baath, *for the respondents.*

JUDGMENT

M.L. Singahl, J.

(1) Through this CM Nikhil Sharma, student of MBBS at P.V. Narsimha Rao Medical College Jolly Grant, Dehra, Dun UP has prayed for the transfer of civil suit titled "A.N. Bhardwaj, Advocate and another *vs.* Himalayan Institute Hospital Trust, Jolly Grant Dehra Dun (UP)" from Ludhiana court to some court of competent jurisdiction either at Chandigarh or in Haryana.

(2) According to Nikhil Sharma Petitioner, Amrinder Bhardwaj-respondent herein joined the said college for MBBS course on 15th December, 1997 against a paid seat. A sum of Rs. 11,49,500 is said to have paid by him towards the admission of the said course to the college authorities. Amrinder Bhardwaj returned to Ludhiana on 20th December, 1997 when the medical college was closed for winter vacation as he found that he would not be able to measure up to the level of intelligence and hard work required for studying MBBS. His father had paid quite a hefty amount for the admission of his son to the said course. He forced him to return to the medical college after the winter vacation when it reopened on 3rd January, 1998 for continuing his studies. He again returned to Ludhiana in the first week of January, 1998. On his return to Ludhiana Shri A.N. Bhardwaj who is an advocate cooked up a story that his son had to give up studies at Dehra Dun due to his alleged ragging because otherwise he could have no case for seeking the refund of the amount paid by him. Respondents filed suit in the Court of Ludhiana claiming a sum of Rs. 31,49,500 comprising Rs. 11,49,500 paid as fee etc. and Rs. 20 lacs as damages. In civil suit, he (Nikhil Sharma) has been arrayed as defendant No. 5. In the civil suit, they have stated that plaintiffs-Amrinder Bhardwaj had to discontinue his studies at Dehra Dun because of his ragging at Dehra Dun by him (Nikhil Sharma) and another student named Vaibhav Gupta. Vaibhav Gupta has been impleaded as defendant No. 6 in the civil suit. He was involved in the alleged ragging of Amrinder Bhardwaj on false, frivolous and baseless allegations. Infact, Amrinder Bhardwaj

had to leave MBBS studies at Dehra Dun because he found that he was not that mentally equipped as to understand what was being taught in MBBS. It is alleged by Nikhil Sharma-petitioner in support of his prayer for the transfer of the suit pending at Ludhiana that A.N. Bhardwaj-respondent No. 1 is an advocate at Ludhiana. No cause of action has arisen on Ludhiana. If any cause of action arose, that arose at Dehra Dun. He wove a net so as to confer jurisdiction on Ludhiana Court in the hope that he wields influence at Ludhiana and he would be able to have his way at Ludhiana. On receipt of summons he and his father came to Ludhiana to engage a counsel. They were man-handled by some people when, they were trying to contact some advocate for engaging counsel for him in the case. He and his father were told that no lawyer there at Ludhiana would be allowed to appear for them and if some one agreed to accept their brief, he would have to face dire consequences. They tried their best to engage some advocate at Ludhiana for them. No advocate at Ludhiana agreed to accept their brief because of the influence of A.N. Bhardwaj being wielded in the bar. Consequently, a lawyer was engaged by them from Chandigarh who put in appearance on 30th October, 1998. Case was adjourned to 16th December, 1998 for filing of the written statement. No other defendant has put in appearance in the case but for him (Nikhil Sharma). A.N. Bhardwaj got the other defendants proceeded *ex parte* with the exercise of his influence. No procedure as laid down in the Code of Civil Procedure was followed to ensure proper service on the other defendants. Neither process for service on them was sent to Dehra Dun nor substituted service was resorted to on them. It is alleged that the petitioner is apprehending that because of the influence of Sh. A.N. Bhardwaj, Court will lean in his favour and decree the suit. This apprehension had arisen in his mind because of the slip shod manner in which trial of the suit is proceeding. Due procedure for service on the defendants has been ignored and said good-bye. On 1st November, 1998, Counsel engaged by him and his wife met with very serious accident while they were returning from Delhi. His counsel suffered fracture in right leg, besides several injuries on other parts of the body. His wife also received head injury. Both were admitted to PGI, Chandigarh and were advised complete rest for 3/4 months. On 16th December, 1998, the counsel deputed his junior to appear before the court and requested for adjournment of the case to some date in March, 1999 as the counsel was not in proper shape and was unable to attend to his professional work and could not undertake travel. That request for adjournment was opposed by A.N. Bhardwaj. Court did not agree to grant adjournment till March/April and adjourned the case only to 9th January, 1999 for filing the written statement. On 9th January,

1999 court granted adjournment on payment of Rs. 200 as costs and adjourned the case to 6th February 1999, although adjournment should have been allowed without payment of costs because counsel was confined to bed due to the fractured leg and he was not in proper shape to draft the written statement. On 6th February, 1999, junior to his counsel reiterated the same request through application. Court happened to be on leave. Case was adjourned to 5th March, 1999 by the reader of the Court. No order on that application was passed. On 5th March, 1999, counsel got the written statement prepared and sent it to the Court through clerk as he himself was not yet fit to undertake travel. On 27th March, 1999 counsel attended the court and reached the Court at 10.45 AM. The case figured very low in the cause list and was not called till 1.00 PM. Counsel enquired about the case and he was informed that the case had been called at about 10.30 when A.N. Bhardwaj was present and it was adjourned to 3rd May, 1999 for recording of the evidence of the plaintiffs. It is alleged that though it was on the record of the Court that an outside counsel was appearing and also that he was not well, Court did not wait and pass over the case for some time and adjourned the case to a date suiting to the convenience of A.N. Bhardwaj, Advocate. Since counsel mainly practises in the High Court at Chandigarh, prayer was made to the Court to adjourn the case to any date falling on any Saturday. Court directed the counsel to call the opposite counsel. When the opposite counsel came Court observed that on Saturdays, Advocates in Ludhiana Courts do not work and as such the case could not be adjourned to a Saturday. On 27th March, 1999 itself was a Saturday when Sh. Bhardwaj and other advocates were attending to their cases in the courts at Ludhiana. It is alleged that A.N. Bhardwaj will not allow him to have justice in this case because of the influence he wields at Ludhiana being a practising advocate there.

(3) This application was opposed by the respondents. It was urged that the Court at Ludhiana had been accommodating the petitioner and his counsel and adjourning the case for written statement from time to time on their request. There are a number of cases pending at Ludhiana in which personal interest of the lawyers is involved. Nothing has been brought on record to show that judicial officers posted at Ludhiana are incapable of dispensing justice in this case. It was denied that Amrinder Bhardwaj, respondent is not an intelligent and a good student. He is an intelligent and a hard working student. He is very bright academically as is borne out by his score in the examinations conducted by the Central Board of Secondary Education (Annexures R-1 and R-2). Prior to that he had been studying in Sacred Heart Convent School from 1st to 10th standard and he passed 10th standard

examination by securing 81.5% marks. It was denied that he was unable to measure up to the level of intelligence and hard work required for studying MBBS. He joined medical college at Dehra Dun on his own for pursuing medical studies. It was urged that he had to leave medical studies at Dehra Dun due to ragging by Nikhil Sharma and Vaibhav Gupta. He had to discontinue his studies at Dehra Dun because of the ill-treatment, torture and beating at the hands of Nikhil Sharma and Vaibhav Gupta. It was denied that he (A.N. Bhardwaj) wields any influence on the Courts at Ludhiana or that the courts are under any body's influence. It was denied that Nikhil Sharma and his father were man-handled by some persons when they came to contact some advocate at Ludhiana for being engaged as counsel in this case. It was denied that they were told that no lawyer from Ludhiana would be allowed to appear for them or that if someone agreed to appear for them he would face dire consequence. There are about 1200 lawyers practising at Ludhiana. Nikhil Sharma did not contact any lawyer whom they might have tried to engage and who refused to be engaged.

(4) I have heard learned counsel for the parties.

(5) Learned counsel for the petitioner submitted that A.N. Bhardwaj, respondent is a senior advocate practising at Ludhiana. He and his son are plaintiffs. They have claimed a sum of Rs. 31,49,500 from Nikhil Sharma and other defendants as damages. Nikhil Sharma and others are outsiders. They will be at disadvantage *vis-a-vis* A.N. Bhardwaj and his son so far as fair trial of the case is concerned. It was submitted how can Nikhil Sharma expect fair deal at Ludhiana when he is an utter stranger there and when he could not engage any counsel at Ludhiana while A.N. Bhardwaj is an advocate of standing and wields influence in the bar. His influence in the bar will influence the fair trial by the Court. It was submitted that justice should not only be done, it should seem to have been done. In support of this submission that in the interest of justice, this case should be transferred from Ludhiana Court to some other Court competent to try it either at Chandigarh or somewhere in Haryana, he drew my attention to *Yoginder Sarin vs. Varinder Kumar Sarin* (1) where it was held that although there are no allegations of interference on the part of the respondent-Advocate, yet it would be in the interest of justice that the case is not tried by a court where the respondent, who is an Advocate and is practising for the last 25 years. Justice should not only be done but it should appear to have been done. Following the aforesaid principle, case titled *Varinder Kumar Sarin vs. Yoginder Sarin* pending in the Court of Additional Senior Sub- Judge, Amritsar was withdrawn and the same was ordered to be transferred to the court of competent jurisdiction at Jalandhar.

(6) Learned counsel for the petitioner submitted that although no part of the cause of action had arisen at Ludhiana, suit was filed at Ludhiana by A.N. Bhardwaj obviously with a view that at Ludhiana, he will have edge over the defendants who would not have smooth sailing and he would have his suit decreed. Relying upon *Arvee Industries and others vs. Ratan Lal Sharma* (2) it was submitted by the learned counsel for the petitioner that if suit is *ex facie* instituted deliberately in a wrong court, it will not have any bearing whatsoever on the question of transfer. The court may bear it in mind as an additional factor if there is, *prima facie*, on the pleadings sufficient justification for such a plea.

(7) Learned counsel for the respondents on the other hand submitted that there is no reason at all for the transfer of this case from Ludhiana court to some other court outside Ludhiana. It is no ground for transfer of the case from Ludhiana court to some other court that A.N. Bhardwaj-plaintiff is an advocate practising at Ludhiana, particularly when there is no mention of any occasion when he allegedly influenced the course of justice or interfered with the fair trial of the suit. It was submitted that Nikhil Sharma sought adjournment for filing written statement and he was readily given adjournment by the Court. It was submitted that merely because the petitioner is highly suspicious, court should not be, after satisfying his whim and caprice.

(8) In *Ashok Kumar vs. Narendra Kumar Jain* (3) it was observed that a refusal by a lawyer or two in not taking the case of the petitioner does not mean that the petitioner cannot avail of professional services.

(9) It was also submitted that in matters of transfer of cases, convenience of both the parties has to be seen and not only the convenience of one of the parties has to be taken into consideration. In *Jyotsna Raje vs. Jagpal Singh* (4) it was observed as follows :

“In deciding an application for transfer the convenience of the parties in the conduct of litigation is a relevant consideration. But the convenience which is to be taken into consideration by the Court is the convenience of both the parties and not only of one of them.

In the absence of any material justifying any reasonable apprehension in regard to the impartiality of the judge trying

(2) AIR 1977 SC 2429

(3) 1989 (2) CLJ (C. Cr. & Rev) 191

(4) AIR 1961 Punjab 560

the case, the mere fact that the opposite Party is a very senior Government official at the place of the court where the case is pending is not sufficient to raise any reasonable apprehension that the petitioner would not get fair and impartial treatment in the court.”

(10) In *Raijot Cancer Society-petitioner vs. Municipal Corporation-respondent* (5) it was held that, “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, it 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 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) Sh. A.N. Bhardwaj is a senior advocate practising at Ludhiana. He and his son are plaintiffs in a suit for recovery of Rs. 31,49,500. Nikhil Sharma and others defendants are outsiders. No wonder, they are put at disadvantage *vis-a-vis* the plaintiffs so far as the fair trial of the suit at Ludhiana is concerned. Justice should not only be done but it should seem to have been done. There will be no harm to the plaintiffs if the case is transferred from Ludhiana court to some other Court at Chandigarh in the hope that trial of the case shall be more just and fair at Chandigarh, because at Chandigarh, neither party shall have an edge over the other. At Ludhiana, plaintiffs may have edge over the defendants.

(12) Taking into account the over all picture of the case, I feel that in the interest of smooth, fair and speedy trial of the case, it would be just and fair if the case is transferred from Ludhiana court to Chandigarh court. So, the case is transferred from Ludhiana court to Chandigarh court. Parties shall appear before the learned District Judge, Chandigarh on 31st October, 2000. Learned District Judge,

Chandigarh will assign this suit for disposal to some competent court having jurisdiction into the matter. Learned trial Court at Ludhiana will send the file of the suit complete in all respects well before the date fixed to the learned District Judge, Chandigarh.

R.N.R

Before S.S. Sudhalkar & Mehtab S. Gill, JJ

IQBAL SINGH,—Petitioner/Workman

versus

THE P.O.L.C. GURDASPUR & OTHERS,—Respondents

C.W.P. No. 13278 of 2000

18th October, 2000

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—S. 11—Doctrine of election—Dismissal from service—Challenge thereto—Workman electing remedy of Civil Court & failing upto the High Court—Workman thereafter cannot turn around to seek remedy under the Industrial Disputes Act after having failed in the Civil Courts—Civil Court had jurisdiction to entertain the suit and, therefore, its decision would be res judicata.

Held, that if the dispute is such which can give rise to remedies to go to Civil Court and under the Industrial Disputes Act and if the workman elects one remedy and fails in the same, then he will not be entitled to take resort to the other remedy. It cannot be said that Civil Court had no jurisdiction to entertain the suit. Moreover, it is not shown that Civil Court had dismissed the suit on the ground of jurisdiction. The principle of *res-judicata* would, therefore, come into play and the petitioner cannot have any right to raise an industrial dispute after getting the decision from the Civil Court on merits.

(Paras 6, 7 & 8)

Sumeet Malhotra, Advocate, *for the Petitioner.*

JUDGMENT

S.S. Sudhalkar, J.

(1) After being unsuccessful in seeking remedy from the civil court, petitioner has now taken re-course to the provisions of the Industrial Disputes Act (hereinafter referred to as "the Act"). The petitioner was working as a conductor in the Punjab Roadways. He was charge-sheeted and after the enquiry he was found guilty and