

Kahan Chand *v.* Faqir Chand (Tek Chand, J.)

It may further be mentioned that the petitioner had not exhausted all the remedies available to him under the Act before coming to this Court. Admittedly, it had got itself registered in the Haryana State and, consequently, could not urge that respondent No. 2 had no jurisdiction to send the impugned notice to it. The petitioner should have gone to him in answer to the notice and if the decision of that authority went against it, an appeal could have been filed and then a revision, if need be, before the appropriate authorities under the Act. This, in my view, is an additional ground for not interfering with the impugned notice.

In view of what I have said above, the petition fails and is dismissed. In the circumstances of this case, however, there will be no order as to costs.

B. R. T.

REVISIONAL CIVIL

Before Tek Chand, J.

KAHAN CHAND,—*Petitioner*

versus

FAQIR CHAND,—*Respondent.*

Civil Revision No. 108 of 1967.

January 5, 1968

Code of Civil Procedure (Act V of 1908)—Ss. 24, 150 and Order 39 Rule 2—Temporary injunction granted whereafter suit transferred to another court—Transferee court—Whether can take action under order 39 rule 2(3).

Held, that under section 24 of the Code of Civil Procedure 1908, a general power of transfer is conferred upon the High Court or the District Court which may be exercised either on the application of any party or by the court of its own motion. The transfer may be of any suit, appeal or other proceeding. Section 150 of the Code leaves no room for doubt that the transferee court shall have

the same powers and shall perform the same duties as those conferred upon the court from which the business was so transferred. The transferee court, therefore, has the jurisdiction to proceed with the application under Order 39 Rule 2(3) of the Code.

Petitioner under section 115 of the Code of Civil Procedure for revision of the order of Shri Udham Singh, District Judge, Gurdaspur, dated 8th December, 1966, affirming that of Shri Niranjana Singh, Sub-Judge, 1st Class, Batala, dated 18th April, 1966, dismissing the application under order 39 rule 2(3) of the Code.

ROOP CHAND CHOWDHARY, ADVOCATE, for the Petitioner.

S. L. PURI, ADVOCATE, for the Respondent.

JUDGMENT

TEK CHAND, J.—In this case, the plaintiff petitioner had instituted a suit in the court of the Additional Sub-Judge, Batala, praying for a perpetual injunction restraining the defendant from using the plaintiff's *deorhi* as a passage. During the pendency of the suit, temporary injunction was granted by the Additional Sub-Judge. Later, the plaintiff filed an application under order 39, rule 2, for action being taken against the defendant as the latter was said to have disobeyed the order of the Additional Sub-Judge. Before the Additional Sub-Judge, Batala, could give his decision, the suit was transferred from his court to the court of Shri Niranjana Singh, Sub-Judge, First Class, Batala, by order of the District Judge. It is not clear from the file under what circumstances, the suit was transferred whether under section 150, Civil Procedure Code as stated by the District Judge or under section 24 of the Code of Civil Procedure. The plaintiff pressed his application under order 39, rule 2 before the transferee court. In the meanwhile, on 10th of September, 1965, the plaintiff's suit was stayed under section 34 of the Arbitration Act. No order had been passed by the court of the Additional Sub-Judge upon the application filed under order 39, rule 2. The plaintiff's application asked the transferee court to pass the necessary order on his application. This application was rejected as the transferee court was of the view that the court of Additional Sub-Judge alone had jurisdiction and he, therefore, dismissed the plaintiff's application under order 39, rule 2(3). The plaintiff went up in appeal to the District Judge from the order of the transferee court which has been dismissed. From this order of the District

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Judge, a petition of revision has been filed under section 115 of the Code of Civil Procedure.

Section 150 of the Code of Civil Procedure runs as under :—

“Save as otherwise provided, where the business of any Court is transferred to any other court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the court from which the business was so transferred.”

Under section 24, a general power of transfer is conferred upon the High Court or the District Court which may be exercised either on the application of any party or by the court of its own motion. The transfer may be of any suit, appeal or other proceeding. Section 150 of the Code leaves no room for doubt that the transferee court shall have the same powers and shall perform the same duties as those conferred upon the court from which the business was so transferred. It is said that the transfer being under section 24 and, therefore, in the matter of taking action under order 39, rule 2(3), it is only the court granting an injunction which may punish the person for its breach. The argument which has found favour with the courts below is that under order 39, rule 1, grant of temporary injunction was passed by the transferor court and that court alone could take action under order 39, rule 2(3) and not the transferee court. On the other hand, the contention of the plaintiff petitioner is that the entire case was transferred and that included application under order 39, rules 1 and 2.

On the question whether for purposes of proceeding under order 39, rule 2(3), the jurisdiction is with the transferor court alone or also with the transferee court to which case has been transferred under section 24, there is conflict of judicial opinion. The view taken in the Calcutta High Court is that such an application can be entertained by the transferor court only.

The learned counsel for the respondent cited *Bellary Press Co. Ltd. v. K. Venkata Rao and others* (1), where a Bench of Madras High Court expressed the view that an interlocutory application

pending before the District Munsif to punish the defendant for disobedience of an *ad interim* injunction granted by the Munsif could not be transferred from his file to the file of some other court by the District Judge or the High Court and section 24 of the Civil Procedure Code did not apply to such cases. In that case, it was held that the transfer of the interlocutory application was bad.

The next case on which reliance was placed is a Division Bench decision of Calcutta High Court in *Sheikh Jaharuddin v. Hari Charan Poddar and others* (2). It was held that in such a case the court granting the injunction alone could punish under order 39, rule 2(3). In that case, an order for a temporary injunction was passed by a Munsif against the defendant in a suit, and after it had been passed, the suit was transferred to the file of the District Judge, who made an order for the attachment of the defendant's property and his imprisonment, as the penalty for his having disobeyed the injunction after the transfer of the case. It was held that the order of District Judge was without jurisdiction as the law did not authorise the Judge who had not granted the injunction to punish for its disobedience, merely because the suit in which it had been granted, had been transferred to his file.

In *Sk. Abu Bakkar and others v. Sm. Parimal Prova Sarkar, Principal Defendant and another* (3), it was also held that on a transfer from court A to court B, an application under order 39, rule 2(3) could not be entertained by court B for want of jurisdiction.

The contrary view has been taken by the High Courts of *Allahabad and Patna*. In *Dulhin Janak Nandini Kunwari v. Kedar Narain Singh* (4), a Division Bench of that Court expressed the view that the proceedings for the enforcement of an injunction under order 39, rule 1 are transferable under the provisions of section 24, Code of Civil Procedure and the proper Court to enforce the injunction is the Court which at the time was seized of the suit in the course of which the injunction was issued. It was also held that the transfer of a suit implies the transfer of all proceedings which arise out of it. Hence, a Court which has passed an interim

(2) 22 I.C. 499.

(3) A.I.R. 1962 Cal. 519.

(4) A.I.R. 1941 All. 140.

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order ceases to have jurisdiction to enforce the order when the suit is transferred to another Court and such power lies in the Court to which the suit is transferred. The reason for this view given by the High Court was that it was every way preferable that the enforcement of an injunction issued in the course of a suit should be in the hands of the Court which at the time is seized of the suit. After the transfer of the suit, any new injunction could only be issued by the Court which was dealing with the suit and it is inadvisable that there should be two Courts which might deal with matters which are in effect identical. A court may issue an injunction under order 39, rule 1 and then, after the suit is transferred, the Court to which it is transferred may have before it other applications of a like nature and a question may arise whether the injunction already issued should be withdrawn. The Court dealing with the suit would be the proper Court to decide whether the injunction should or should not be withdrawn.

In Mineral Development Ltd v. State of Bihar (5), a Bench of that Court expressed the view that where a suit or proceeding is transferred from one court to another, it means the transfer not only of the suit or proceeding alone, leaving in tact the transferor court's jurisdiction to dispose of any act of disobedience of an injunction which may have been issued by that court prior to the transfer, but that order of transfer of the suit or proceeding includes the suit as also the ancillary proceedings such as disobedience of an order of injunction by the party concerned and both these matters must be disposed of by the transferee court itself. It followed an earlier decision of that Court reported in *Seeobrich Singh v. Basgit Singh and others* (6) and dissented from the Calcutta view in *Sheikh Jaharuddin v. Hari Charan Poddar and others* (2).

The transferee court should have powers co-extensive with the transferor court. Section 150 specifically provides that. But if the transfer is of a particular case from the file of one court to another under section 24, there is no reason in principle that the transferee court should not be held to have the same power as the court from which the case has been transferred. There seems to be no difference in principle. The disobedience of the order of a court under order 39, rule 1 cannot be punished by the transferee court.

(5) A.I.R. 1962 Patna 443.

(6) A.I.R. 1957, Patna 73.

Such a view will necessarily lead to bifurcation of the proceedings in the event of a transfer under section 24, the transferor court to retain the proceedings arising out of order 39, rule 1 and rule 2(3) and the remaining proceedings in the suit to be conducted by the transferee court. In a conceivable case, similar proceedings may have to be taken in the transferee court as well. Confusion will considerably be added if the suit has to be transferred again under section 24. The view which found favour with the High Courts of Patna and of Allahabad appears to me to be in consonance with reason and the real intention of the Legislature.

For the reasons stated above, I am of the view that the transferee court has the jurisdiction to proceed with the application under order 39, rule 2(3) and is directed to proceed accordingly. The decision of the transferee court declining to exercise jurisdiction and also the decision of the learned District Judge upholding the view of the trial court is erroneous.

The result is that the petition of revision is allowed and order of the trial court as also of the District Judge under revision are set aside. In the circumstances, the parties are left to bear their own costs.

B. R. T.