

D.A.V. College Hoshiarpur Society (Regd.) and another v. 119
D.M. Sharma and others (M.M. Kumar, J.)

Before M.M. Kumar, J

D.A.V. COLLEGE HOSHIARPUR SOCIETY
(REGD.) AND ANOTHER,—*Plaintiffs/Petitioners*

versus

D.M. SHARMA AND OTHERS,—*Defendants/Respondents*

C.M. NO. 2955—CII OF 2004

13th September, 2004

Code of Civil Procedure, 1908—S. 24—Civil suit by plaintiffs filed in a Court at Hoshiarpur—Defendent a member of Bar practising in that Court—Whether this is sufficient ground for transferring the case to a Court outside Hoshiarpur District—Held, no—Merely because the litigant is a practising Advocate without anything more would not constitute a valid ground for transfer of the case—Petition dismissed with costs.

Held, that if the litigation has been initiated by an Advocate or against the Advocate that alone would not be a sufficient ground for seeking transfer of proceedings under Section 24 of the Code. This argument if accepted would have pernicious and deleterious effect on the administration of justice. In a given case there may be the possibility of establishing some relationship of a particular Advocate with the Presiding Officer and the same may constitute a ground for transfer but merely because the litigant is a practising Advocate without anything more would not constitute a valid ground for transfer of the case. If such a principle is accepted, then all cases concerning members of the legal fraternity have to be contested at a place other than the one where the member of the Bar is practising. Such a general ostracism of legal fraternity is impermissible.

(Para 6)

Sandeep Bansal, Advocate, *for the Petitioners.*

C.M. Sharma Advocate, *for the Respondents*

ORDER

M.M. KUMAR, J.

(1) This order shall dispose of C.M. Nos. 2955 CII of 2004 and 3001 CII of 2004. Facts are being referred from the first petition.

(2) This petition filed under Section 24 of the Code of Civil Procedure, 1908 (for brevity the Code) prays for transfer of the suit filed by the plaintiff-petitioner namely Civil Suit No. 225/2003 from the Court of Civil Judge (Junior Division), Hoshiarpur to any other Court of competent jurisdiction outside Hoshiarpur. The petitioner who is an ex MP in his capacity as President of the D.A.V. College, Hoshiarpur Society has filed the aforementioned civil suit seeking a declaration to the effect that the DAV Management Committee of DAV College, Hoshiarpur, Society headed by him as President is the legal, real and true Managing Committee. A further relief for perpetual prohibitory injunction by way of consequential relief restraining the respondents from holding themselves out as the officer-bearers of the Managing Committee has also been prayed. Similar relief has been claimed against respondent No. 6.

(3) Notice of the petition was issued and for the respondents, Mr. Chaman Lal Sharma has put in appearance. Arguments have been heard.

(4) Mr. Sandeep Bansal, learned counsel for the petitioner has argued that respondent No. 1-D.M. Sharma is a an Advocate practising in the Court at Hoshiarpur for the last many years and, therefore, there is a possibility of influence of the afore-mentioned Advocate on the proceedings of the suit. According to the learned counsel, this will constitute sufficient ground for invoking section 24 of the code and transferring the suit to a court outside District Hoshiarpur. In support of his submission, the learned counsel has placed reliance on two judgments of this court in the cases of **Yoginder Sarin versus Varinder Kumar Sarin (1)** **Ved Parkash Sharma and others versus N.N. Jain (2)** and argued that those cases were transferred merely on the ground that there was likelihood of the influence of the Advocate on the court proceedings once it is found that the concerned Advocate was practising in the local Courts for over 25 years. The learned counsel has also argued that the civil Judge has passed some

(1) 1993 (1) R.R.R. 492

(2) 1992 (1) C.L.R. 563

illegal order against which Civil Revision in this court had been filed and was allowed as is evident from order dated 15th January, 2004 Annexure P-1 passed in C.R. No. 219 of 2004.

(5) Mr. Chaman Lal Sharma, learned counsel for the respondents has pointed out that Civil Revision No. 219 of 2004 filed by the petitioner has already been disposed of by directing the respondents to firstly file the written statement and then file an application for production of documents by the plaintiff-petitioner.

(6) Having heard learned counsel for the parties and perusing the record and judgment of this Court, I am of the considered view that this petition is liable to be dismissed because the principal argument raised by the learned counsel for the petitioner is untenable namely that if the litigation has been initiated by an Advocate or against the Advocate that alone would be a sufficient ground for seeking transfer of proceedings under Section 24 of the Code. This argument if accepted would have pernicious and deleterious effect on the administration of justice. In a given case there may be the possibility of establishing some relationship of a particular Advocate with the Presiding Officer and the same may constitute a ground for transfer but merely because the litigant is a practising Advocate without anything more would not constitute a valid ground for transfer of the case. If such a principle is accepted, then all cases concerning members of the legal fraternity have to be contested at a place other than the one where the member of the Bar is practising. Such a general ostracism of legal fraternity is impermissible. The Judgments of this Court which have been cited by the learned counsel do not lay down any Rule of law warranting acceptance of the prayer made.

(7) The other argument that some illegal order was passed by the Civil Judge would also not constitute a ground for transfer because the remedy of revision or appeal at an appropriate stage is available to the petitioner. To err is human. Any officer may commit an error which is liable to be corrected at the appropriate forum. Therefore, there is no ground for interference in this petition. Dismissed subject to payment of Rs. 5000 as costs.

R.N.R.