

JUDGMENTSHEET**HIGH COURT OF SINDH, KARACHI**

Civil Revision ApplicationNo. 64 of 2016

APPLICANT : Ajeet Kumar through Mr. Khursheed
Javed, Advocate

RESPONDENTS NOS. :
1 TO 3 Nemo

DATE OF HEARING : 02.08.2016

DATE OF JUDGMENT : 02.08.2016

JUDGMENT

Muhammad Humayon Khan, J: This Revision Application under Section 115CPC is filed against the Order dated 30.07.2016 passed by the learned District Judge, Karachi-East, in Transfer Application No. 39 of 2016, whereby, the learned District Judge dismissed the transfer application moved by the applicant.

2. The relevant facts of the case in nutshell for the disposal of this revision application are that the respondent No.1 filed Suit No. 187 of 2016 against the applicant for permanent injunction on the ground that the respondent No.1 is the tenant of the applicant, who is trying to dispossess him from the suit property without due process of law. This suit was filed on 09.02.2016 and summons were issued to the applicant. During pendency of this suit, the applicant has illegally dispossessed the defendant No.1 and thrown out his articles outside the suit property on 10.02.2016. The respondent No.1 on 11.02.2016 moved an application under Section 94 (e) read with Section 151 and Order 18 Rule 18 CPC for surprise inspection of the suit property in

order to ascertain the fact of possession and dispossession from the suit property and in the event of dispossession, the respondent No.1 may be put in possession of the suit property. The learned Civil Judge appointed Commissioner to inspect the suit property, who inspected and submitted his report on 12.02.2016. The learned Civil Judge by his Order dated 13.02.2016 directed the applicant to restore the possession to the respondent No.1. On the one hand, the applicant preferred CMA No. 104/2016 against the Order dated 13.02.2016, which is pending before the learned II Additional District Judge, Karachi-East, and on the other hand, the applicant filed transfer application No. 39/2016 before the learned District Judge, Karachi-East, who dismissed the same by Order dated 30.07.2016, against which, the applicant filed this revision application.

3. I have heard the learned counsel for the applicant and perused the record.

4. The learned counsel for the applicant contended that the Order dated 13.02.2016 of the learned Civil Judge is illegal as it was passed without notice to the applicant in a hasty manner, which shows that the learned Civil Judge give undue favour to the respondent No.1 and therefore it is a valid ground for transfer of the said suit from his Court to another Court of Civil Judge. He further submitted that the learned District Judge has completely ignored this fact while dismissing the transfer application and therefore the impugned Order of the learned District Judge is fit to be set-aside. However, the learned counsel for the applicant has not cited any case law in support of his arguments.

5. The first contention of the learned counsel for the applicant is divided in two parts namely (i) the Order dated 13.02.2016 of the learned Civil Judge is illegal as it was passed without notice to the applicant in a hasty manner and (ii) this act of the learned Civil Judge shows that the learned Civil Judge gave undue favour to the respondent No.1 and therefore it is a valid ground for transfer of the said suit from his Court to another Court of Civil Judge. I am not impressed with this contention of the learned counsel for the applicant, which is totally misconceived and contrary to law.

6. So far as the legality or illegality of Order dated 13.02.02016 of the learned Civil Judge is concerned, it cannot be decided in this revision application for two reasons namely (i) it is not the subject matter of this revision application and (ii) it is already challenged and sub-judice in CMA No.104 of 2016 which is pending before the learned II Additional District Judge, Karachi-South.

7. It is a well established legal proposition that justice is to be done without fear or favour, hence, the Presiding Officers are equally to be protected from frivolous transfer applications in order to achieve the transparent even-handed justice so that one of the litigant may not be in a position to overawe the Presiding Officer which may ultimately result in tilting the scales of justice under the fear of maligning, therefore, while exercising jurisdiction to transfer of cases from the sub-ordinate Courts, a balance has to be struck in order to ensure that the cases are not transferred merely on the basis of suppositions, unfounded and conjectural apprehensions. Thus, merely an adverse judicial order passed against a party, will not

solely be a sufficient ground for transfer of the case as the aggrieved person has a remedy to challenge the order before a higher forum. My this view finds support from the cases of (i) Sameer Ehsanullah Makhzan and 3 others vs. Muhammad Asif Zaman and 3 others (PLD 1993 Lahore 554) and (ii) Mian Muhammad Rafiq Saigol Vs. BCCI and others (1996 CLC (Lahore) 1390).

8. The second contention of the learned counsel for the applicant is that the learned District Judge has completely ignored the facts while dismissing the transfer application and therefore the impugned order of the learned District Judge is fit to be set-aside. This contention has also no force. I have carefully gone through the order of the learned District Judge, which is based on correct legal proposition and hence I do not find any justification to interfere in the order of the learned District Judge, which is passed in accordance with law.

9. No other substantial ground or material has been brought on record on the basis whereof, it could be said that the learned Civil Judge is either prejudiced or biased against the applicant which may justify the transfer of the suit.

10. To attract the provisions of Section 115 CPC, the applicant has to satisfy this Court that the sub-ordinate Court has:

- a) exercised a jurisdiction not vested in it by law, or
- b) failed to exercise a jurisdiction so vested, or
- c) acted in the exercise of the jurisdiction illegally or with material irregularity.

The learned counsel for the applicant has not been able to point out any illegality or irregularity committed by the learned District Judge while dismissing the said transfer application.

11. It is also well settled principle of law that discretionary orders of subordinate Courts cannot be interfered with unless found fanciful and arbitrary in revision application under Section 115 CPC. Reliance can be placed upon the cases of (i) Shahzada Muhammad Umar Beg Vs. Sultan Mahmood Khan and another (PLD 1970 Supreme Court 139) and (ii) Malik Khuda Bakhsh and another Vs. Syed Hamid Ali Shah (1981 SCMR 196).

12. In view of the above discussion, this revision application alongwith CMA No. 5568/16 was dismissed in limine by short order dated 02.08.2016 with the direction to the learned XIV Civil Judge, Karachi-East, to decide the instant suit within three months and compliance report should be submitted from time to time to this Court through MIT-II and the above are the reasons for the said short order.

J U D G E