

S.B.Civil Misc. Transfer Petition No.41/2007

Narendra Kumar Johari.

vs.

Kanti Lal.

Date : 1.6.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Narendra Kumar Johari, petitioner present in person.

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Heard petitioner present in person and who argued the case himself.

The petitioner sought permission for listing of this transfer petition today itself and permission was granted by this Court.

The petitioner submitted that an execution petition is pending in the Court of Civil Judge (Senior Division), Jodhpur which is being executed despite the fact that there is no decree against the petitioner. It is submitted that the petitioner earlier sought transfer of his petition filed under Order 21 Rule 97 CPC from the same court and which was transferred to another Court. The petitioner has reason to believe

that the petitioner will not get justice from the executing court. It is submitted that the petitioner's transfer application was dismissed by learned District Judge, Jodhpur vide order dated 28.5.2007 and the possession warrant has been issued by the executing court.

In the transfer petition, it is submitted that the petitioner being a party to the suit and being impleaded as judgment debtor in the execution petition as legal representative of the judgment debtor, filed objection to the execution application. The learned Civil Judge (SD), Jodhpur did not pass any order on any application and ultimately, on 23.2.2007, he fixed the case for order on 27.2.2007. According to the petitioner, the case was fixed for orders without giving opportunity of hearing to the petitioner. Therefore, the petitioner moved an application at 10:30 AM on 27.2.2007 that the learned executing court may not pass the order as the petitioner is filing an application under Section 24 CPC for transfer of the case to another court. It is submitted by the petitioner that on receipt of this application, the learned Civil Judge (SD), Jodhpur in haste decided all the applications by handwritten order and issued warrant of possession for the premises and ordered police aid. According to the petitioner, some order-

sheets were wrongly drawn in the Court file in relation to the events of January, 2007. In view of the above, the petitioner has every apprehension that in execution case, adverse order may be passed against the petitioner.

I considered the submissions of the petitioner and perused the certified copy of the order dated 28.5.2007 passed by the learned District Judge as well as comments which were sent by the learned executing court to the learned District Judge in response to the comments sought by learned District Judge, Jodhpur on petitioner's transfer petition.

It appears from the facts of the case that a suit for eviction of tenant was filed in the year 1970 which was decreed by the trial court on 24.7.1978 (C.O. No.52/1972). The judgment and decree dated 24.7.1978 was challenged by preferring appeal by one of the defendant i.e. defendant no.1. Said appeal was allowed by the appellate court on 5.4.1980. Regular second appeal no.152/1980 was preferred by the plaintiff against the appellate judgment and decree dated 5.4.1980. Second appeal was allowed by this Court vide judgment dated 14.1.2000 and eviction decree passed by the trial court was restored. The judgment of this Court dated 14.1.2000 was challenged by preferring SLP

No.4520/2004 by all the legal representatives of defendant no.1 – Smt. Chand Kanwar and in that, the petitioner was impleaded as proforma respondent. The SLP was dismissed by the Hon'ble Supreme Court on 29.3.2004.

The petitioner submitted a petition under Order 21 Rule 97 CPC which was dismissed on 29.1.2007. Against this order dated 29.1.2007, the petitioner preferred appeal which was dismissed by the Court of Additional District Judge No.1, Jodhpur vide order dated 16.3.2007. The petitioner submits that he has challenged the order dated 16.3.2007 by preferring appeal but admittedly no stay order has been obtained by the petitioner in the said appeal.

By order dated 27.2.2007, some applications of the petitioner were decided by the executing court against which the petitioner submitted a review petition. The learned District Judge was of the view that the petitioner sought transfer of objection petition filed under Order 21 Rule 97 CPC and that was allowed because of the reason that the decree holder did not oppose that prayer. But that time, the petitioner did not submit application for transfer of execution petition for the reasons best known to the petitioner. The learned District Judge in detail considered all the facts and the fact that there is no stay order from any court against the execution of the decree which was

passed in the suit filed in the year 1970 and for which the trial court decreed the suit in the year 1978 and regular second appeal was allowed by this Court and SLP was dismissed by the Hon'ble Supreme Court and thereafter, the petitioner's objection petition under Order 21 Rule 97 CPC and appeal against the said order were already dismissed, then the transfer application is filed only to obstruct the execution proceedings. If the petitioner is aggrieved against any orders of the executing court which have already been passed than the proper remedy was to challenge these orders and not move application for transfer of case. No reason has been shown by the petitioner if he had any case of stay of execution than why he failed to obtain stay of execution when his objection under Order 21 Rule 97 CPC was dismissed by the appellate court on 16.3.2007 almost two months have passed to that order. The petitioner also failed to give any reason why he sought transfer of only petition filed under Order 21 Rule 97 CPC and did not sought transfer of execution petition at that time.

In view of the above reasons, this transfer petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya