

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) No.1296/2008**

% **Date of decision: 29<sup>th</sup> January, 2010**

**SHRI JITENDRA KUMAR GUPTA**

**..... Petitioner**

Through: Mr.S.K. Choudhary with Mr. S.P. Shaunak,  
Advocates.

Versus

**SHRI BAL KISHAN SAINI & ANR.**

**..... Respondents**

Through: Mr. Uchit Bhandari, Advocate for R-1.  
Mr. B.S. Randhava, Advocate for R-2.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may  
be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported  
in the Digest?

**RAJIV SAHAI ENDLAW, J.**

1. This petition under Article 227 of the Constitution of India has been filed with respect to the order dated 4<sup>th</sup> September, 2008 of the District Judge Delhi dismissing the application of the petitioner under Section 24 of the CPC. The petitioner seeks transfer of two suits pending before the courts of different Addl. District Judges to one court and transfer of two suits pending in the courts of two different Civil Judges also to the same court of the Addl. District Judge. Though one of the objections of the respondents is that the suits pending in the court of the Civil Judges cannot be transferred to the court of the Addl. District Judge in

exercise of power under Section 24 of the CPC, thereby affecting the right of appeal but the said contention is no longer *res integra*. This court in ***Shriram Pistons & Rings Ltd. Vs. Manju Awasthy*** 68 (1997) DLT 112 has held that such a transfer can be allowed.

2. The only question which thus remains is whether a case for transfer is made out or not. The petitioner seeks transfer on the ground that the issues in all the four suits are interlinked.

3. One of the suits before the Addl. District Judge has been instituted by the respondent No.1 against the petitioner and his HUF for recovery of monies stated to have been advanced by way of personal loan. The other suit has been filed by the petitioner against the respondent No.1 only seeking rendition and inspection of accounts of a private limited company stated to have been jointly got incorporated by the petitioner and the respondent No.1 and in which both of them were directors. One of the suits before the Civil Judge has been filed by the respondent No.2 against the petitioner and the respondent No.1 for recovery of rent. The other suit before the Civil Judge has also been filed by the respondent No.2 against the petitioner and the respondent No.1 for declaration to the effect that the petitioner and the respondent No.1 were the real owners of a business of which the respondent No.2 was a dummy proprietor.

4. The petitioner admits monetary dealings with the respondent No.1 as well as with the respondent No.2. The case of the petitioner is of adjustment of accounts. It is for this reason that transfer of the suits to one court is sought. Though undoubtedly the pleas in one case may be relevant in the other case but I find that the nature of all the four suits is quite distinct. They cannot be consolidated and tried together and common order is not expedient. Once that is so, in my view, even in exercise of powers under Section 24 of the CPC, the rule

in Section 15 of CPC of trial by the court of minimum pecuniary jurisdiction ought not to be disturbed.

5. As far as the plea of adjustment of accounts etc. are concerned, the same can be taken care of by the party seeking to rely upon the pleadings in another case by filing copies of the proceedings in the other case. The scope of enquiry in each suit is found to be entirely different. The contention of the counsel for the petitioner that the Addl. District Judge before which one of the suits was pending had stayed further proceedings in the suit till the pendency of the application under Section 24 of the District Judge and thus could not have given a report to the District Judge *inter alia* to the effect that there was no commonsality in the suits cannot be accepted. Merely because the Addl. District Judge had restrained his hands awaiting the outcome of the application under Section 24 of the CPC did not preclude the Addl. District Judge, upon report being called by the District Judge, from opining that the subject matter of the suits was different. Similarly, the contention of the petitioner of application for impleadment of other parties in the suit having been filed also does not persuade me to interfere with the discretion exercised by the District Judge specially, when it is informed that the four suits are at different stages.

6. There is no merit in the petition; it is dismissed.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**29<sup>th</sup> January, 2010**

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