

**Serial No. 01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No. 26 of 2023

Date of Decision: 30.09.2024

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Revd. Himanshu Christian  
Presbyter-in-Charge, Shillong Pastorate,  
R/o All Saint's Cathedral, Shillong  
Diocese of East India, Church of North  
India, Shillong, Meghalaya

:::Petitioner

-Vs-

1.Shillong Pastorate Committee, All Saint's  
Cathedral, Shillong, Diocese of East India,  
Church of North India  
All Saints' Hall, IGP, Shillong, Meghalaya  
Represented by its Secretary

2.Shri. Archie Kharpuri  
Secretary, Shillong Pastorate Committee  
All Saint's Cathedral, Shillong  
Diocese of East India, Church of North  
India, Shillong, Meghalaya

:::Respondents

3.The Diocese of North East India, Church  
of North India, Bishop's Kutu, MG Road,  
Shillong, Meghalaya, represented by its  
Secretary

:::Pro Forma Respondent

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**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)**

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. S. Sen, Adv. (For R 1)  
Mr. D.G. Pyngrope, Adv. (For R 2)  
Mr. I. Kharmujai, Adv. vice  
Mr. S. Jindal, Adv. (For R 3).

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i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

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**JUDGMENT AND ORDER**

1. This Revision application has been filed under Section 24 CPC, read with Rule 1B of the Administration of Justice and Police in the United Khasi and Jaintia Hills Rules, 1937, praying for transfer of T.S. No. 27(T) of 2023, along with all connected Misc. Applications pending before the Court of the Assistant to Deputy Commissioner (J), Shillong, to the Court of the Munsiff at Shillong.

2. The brief facts are that the petitioner by way of the aforementioned Title Suit had sought a declaration that he as plaintiff is the duly appointed

Presbyter-in-charge of the Shillong Pastorate, as well as the Ex-officio President of the Shillong Pastorate Committee, and to allow him to function as such, and further to declare the impugned proceedings of Special General Meetings held on 02.07.2022 and 17.06.2023, and Annual General Meeting dated 23.09.2023, as well as, impugned letters dated 23.06.2023, 24.07.2023 and 29.09.2023, issued by the respondent No. 2/Defendant, as null and void. The dispute in question for which the above noted reliefs have been prayed are with regard to the decisions taken in the said Special General Meetings, wherein decisions have been taken to replace the petitioner and further actions proposed thereon.

3. The Trial Court then by order dated 24.11.2023, passed in Misc. Case No. 117(T) of 2023, granted ex-parte ad-interim injunction in favour of the petitioner till the next date of hearing, which was thereafter extended on the appearance of the respondent/defendant till 07.12.2023. The respondents had then filed 2 Misc. cases, being Misc. Case No. 127(T) of 2023 and Misc. Case No. 129(T) of 2023, challenging the maintainability of the suit, on the ground of jurisdiction, as the cause of action had arisen in the ‘normal areas’ of Shillong, wherein the Administration of Justice Rules, 1937 would have no application. Other Misc. Applications for vacation of the order dated 24.11.2023, were also filed and were numbered as Misc. Cases No. 126(T) and 128(T) of 2023. In the intervening period however,

before the applications could be taken up, the petitioner on the same date, when the matter was fixed i.e. on 07.12.2023, approached this Court by way of the instant Revision Application, wherein this Court by order on the same date i.e. on 07.12.2023, directed that status quo be maintained as far as the proceedings of the case before the Trial Court were concerned.

4. It has been submitted by Mr. S. Deb, learned counsel for the petitioner that as it was apparent, that the suit had been instituted before a Court which lacked jurisdiction, the instant Revision Application had been filed accordingly for transfer to a Court of competent jurisdiction i.e. the Court of learned Munsiff, Shillong. He further submits that this Court is vested with ample discretionary power to transfer the Title Suit, and if the suit is dismissed or the plaint returned by the Trial Court, at this stage, after an injunction has been passed in favour of the petitioner, severe prejudice would be caused. He therefore prays that the Title Suit along with all connected Misc. Applications, now pending before the Court of the Assistant to Deputy Commissioner at Shillong, be transferred to the Court of Munsiff at Shillong, from the stage as it pertained on 07.12.2023.

5. Mr. S. Sen, learned counsel for the respondent No. 1, has submitted that admittedly power to transfer a case is a matter of discretion to be exercised by this Court, but however, in the instant case the respondent/defendant has already raised the question of maintainability on

the basis of which the Misc. Cases had been registered. The learned counsel contends that the Revision petitioner having participated in the same, and then filing the instant Revision Application for transfer, amounts to abusing the process of the Court. He further submits that an application under Order 39 Rule 4 of the CPC, for discharge, recall of the ex-parte injunction order is also pending before the Trial Court, and as such, the prayer as made out in the instant application for transfer may not be entertained.

6. The learned counsel then submits that during the pendency of the instant Revision Application before this Court, the petitioner had filed T.S. No. 1(H) of 2024, before the Court of Munsiff at Shillong, against the same respondents with similar prayers as sought in T.S. No. 27(T) of 2023, along with Misc. Applications. This suit he submits was then withdrawn by the petitioner which was allowed by the Court of the Munsiff by order dated 16.04.2024. Thereafter, he further submits that a fresh suit was instituted by the petitioner which was registered as T.S. No. 2(H) of 2024, against the respondents No. 1 and 2, and two other parties with a similar prayer that was made in the earlier T.S. No. 1(H) of 2024. This suit too he submits, was again withdrawn by the petitioner, which was allowed by order dated 30.04.2024. The learned counsel to substantiate the submissions has produced certified copies of the plaints in both the suits along with the orders that have been passed thereon, and has taken this Court to the

relevant orders, and prayers made therein. It has also been submitted that the petitioner has been instituting suits before various Courts, with similar reliefs prayed which amount to an abuse of the process of Court, and the question of maintainability on the ground of jurisdiction having already been raised by the respondents, which are pending hearing before the Trial Court, the petitioner ought not to have filed the instant Revision Application. In support of his submissions, the learned counsel has placed reliance in the case of *DAV Boys Senior Secondary School & Ors. vs. DAV College Managing Committee* reported in (2010) 8 SCC 401 and also in the case of *Hari Ram vs. Anil Kumar* reported in 1985 SCC OnLine P&H 578, to impress on the point that Courts exercise this jurisdiction in interest of justice and to adherence of fair trial.

7. Having heard the learned counsel for the parties, this Court finds it cannot ignore the attendant facts that are germane to the issue, such as the timing that this matter had been brought before this Court seeking transfer, and the events that had preceded the institution of the instant Civil Revision Application. In matters of transfer, as provided in Section 24 of the CPC, powers have been vested on the High Court or District Court to transfer any suit, appeal or other proceeding, but this power has to be exercised taking into account, the circumstances surrounding the said prayer for transfer. In this context, it would be apposite to refer to the tests to be applied in respect

of transfer of suits, as laid down in the case of ***Kulwinder Kaur vs. Kandi Friends Education Trust***, where in Para-23 thereof, the Supreme Court has observed as follows.

***“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; ‘interest of justice’ demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a ‘fair trial’ in the court from which he seeks to transfer a case, it is not only the power, but the duty of the court to make such order.”***

8. Further, in the case of ***DAV Boys Senior Secondary School(supra)***, as cited by the counsel for the petitioner, at Para – 12 thereof, it has been held as follows.

***“12. Section 25 of the Code itself makes it clear that if any application is made for transfer, after notice to the parties, if***

*the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other civil court in one State to another High Court or other civil court in any other State. In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Further illustrations are, balance of convenience or inconvenience to the plaintiff or the defendant or witnesses and reasonable apprehension in the mind of the litigant that he might not get justice in the court in which suit is pending. The abovementioned instances are only illustrative in nature. In the interest of justice and to adherence of fair trial, this Court exercises its discretion and orders transfer in a suit or appeal or other proceedings.”*

9. Keeping in mind the judicial pronouncements as extracted above, and in consideration of fair trial, the interest of justice, apart from other considerations which may be relevant, an examination of the instant case at hand, would show that the transfer has been sought at the stage, when it was apparent to the petitioner that no further relief would be forthcoming. The very fact that this Revision Application was presented before this Court, when applications had been filed by the respondents, and were pending consideration on the question of jurisdiction, before the Trial Court, speaks volumes in itself. The case at hand, is not one of where the petitioner is apprehensive of not getting a fair trial, or that severe prejudice would be



caused, if the transfer is denied, but is clearly one of a litigant seeking to protract the proceedings, and attempt to sustain, whatever interim relief that had initially been obtained to his advantage. This aspect is clearly demonstrated by the fact that after having participated in the proceedings, wherein the question of jurisdiction was before the Trial Court, the petitioner instead of continuing therein, has taken a detour by way of the instant Revision Application to scuttle the same.

10. This Court while noticing the facts as placed that the petitioner had during the pendency of this matter before this Court, also filed two Title Suits on subsequent events that had unfolded, which however, emanated from the same cause of action, the same however, is not adverted to, inasmuch as, the examination by this Court is to only whether any sufficient grounds have been made out to warrant the exercise of discretionary power to order for transfer of the suit. As can be seen from the facts and circumstances of the case and from the discussions made hereinabove, in the considered view of this Court, no case has been made out by the petitioner for transfer of the suit, especially when the question of the territorial jurisdiction of the Trial Court to entertain the suits is still pending adjudication.

11. Accordingly, for the reasons aforementioned, the instant Revision Application is dismissed.

12. No order as to costs.

**Chief Justice (Acting)**

Meghalaya  
30.09.2024  
"D.Thabab-PS"