



TA-1183-2023 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.103

**TA-1183-2023 (O&M)
Date of Decision: 05.05.2025**

RAJBIR SINGH KADIAN

....Applicant

Versus

JAGDEEP AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Applicant-in-person.

Mr. Sushil Sheoran, Advocate
for respondent No.1 (sole contesting respondent).

ARCHANA PURI, J. (Oral)

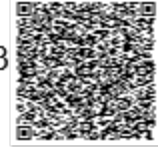
CM-8025-CII-2025

The present application has been filed for placing on record the written statement, copy of application under Order 7 Rule 11 CPC and reply filed thereupon.

Without prejudice to the rights of the parties, to be adjudicated on merits, the application is allowed and the requisite documents are taken on record.

Main case

The applicant has filed the present application for seeking



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transfer of the civil suit i.e. CS/590/2017, titled '*Jagdeep Vs. State of Haryana and others*', filed by respondent No.1, which is pending in the Courts at Charkhi Dadri and he seeks transfer of the same to the Court of competent jurisdiction at Panchkula.

Upon notice issued, respondent No.1, who is the sole contesting respondent, made appearance through counsel and filed reply.

The applicant, who is present in person and the counsel for the contesting respondent, heard.

At the very outset, it is submitted by the applicant that he retired on 31.12.2017, from the post of Principal, Department of Technical Education, Haryana. During the course of his duties, while respondent No.1 was working as a Lecturer in Electrical Engineering at Government Polytechnic, Jhajjar, the applicant had recorded the adverse remarks in his Annual Confidential Report, which were conveyed to respondent No.1 and just on this account, respondent No.1 is nursing grievance against the applicant. As such, he had filed the civil suit in question, for seeking damages for defamation and the same is pending in the Courts at Charkhi Dadri. However, it is submitted by the applicant that Charkhi Dadri, is at a distance of about 250 kilometres from Panchkula and in these circumstances, it is difficult for him, to defend the civil suit, more particularly, when all his witnesses, who are to be examined, are also senior citizens, just like him.

Furthermore, it is submitted by the applicant that he is 63 years old, whereas, respondent No.1, who is plaintiff before learned Trial Court, is 45 years old. He has submitted that his wife is also having several health issues, the particulars whereof, have been mentioned in paragraph

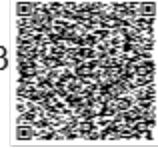


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No.7 of the application. Moreover, the applicant submits that it is the balance of convenience, which is the prime consideration, for the disposal of the transfer application. To so substantiate his submissions, the applicant has placed reliance upon the judgment passed by Gauhati High Court, in the matter of '*Sajida Jesmine Vs. Abdul Hashim*', 2024 (263) AIC 373. In the given circumstances, a prayer has been made for transfer of the civil suit.

On the other hand, the counsel for respondent No.1, while making reference to the reply filed, has submitted that the civil suit in question, was filed in the year 2017 and after a period of about 6 years, the present application has been filed, for seeking transfer of the same. The applicant had made appearance before learned Trial Court and filed reply. He had also cross-examined all the witnesses, examined by respondent No.1. Now, when the case is at the stage of recording of defendant evidence, the present application has been filed. Also, it is brought to the notice of the Court that the applicant had also filed an application under Order 7 Rule 11 CPC, which is pending adjudication before learned Trial Court. When the major portion of trial has already been completed, it is submitted that it shall not be appropriate to transfer the civil suit, more particularly, when the demeanor of the witnesses, who have been examined, has already been observed by the Court.

The counsel for respondent No.1 further submitted that the applicant always has an option to make appearance through virtual mode. Even, the witnesses, as such, who are to be examined by him, can make appearance in this manner and respondent No.1 shall not raise any objection, for conducting of the cross-examination through virtual mode. To so

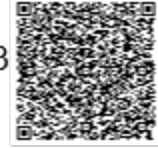


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substantiate his submission, the counsel for respondent No.1 has placed reliance upon the judgment passed by Hon'ble Supreme Court in *Transfer Petition (Civil) No.1082 of 2023*, titled '*Gunjan Sharma Vs. Appurv Saini*', decided on 20.07.2023.

In view of the rival submissions aforesaid, at the very outset, it is pertinent to mention that there is no dispute about the considerations, which the Court has to take note of, while deciding the transfer application, as it is always the balance of convenience, which primarily is required to be considered. However, it is not only the age of the applicant, or the difficulty, which the applicant faces, is to be considered. Various other circumstances, spelt out from the material brought forth, also ought to be taken into consideration. In the case in hand, it is pertinent to mention that the suit in question, which is sought to be transferred, was filed in the year 2017. The applicant had made appearance in the same and even, filed reply. Even, he had joined the examination of the witnesses and also conducted cross-examination of the various witnesses, examined by respondent No.1 (who is plaintiff before learned Trial Court). It is only at the stage of defendants' evidence, that the application for seeking transfer of the suit was filed. The said application was filed on 04.09.2023. Simultaneously, the applicant had filed an application under Order 7 Rule 11 CPC, before learned Trial court.

Considering the stage of the suit, when the major portion of the witnesses has been examined before learned Trial Court, it shall not be appropriate to transfer the case, on account of the applicant having shifted to Panchkula. This is all the more important to consider, that the applicant is



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not required to make appearance before learned Trial Court, on each and every date of hearing. Even, it is submitted that the witnesses of the applicant are also senior citizens. May it be so. The applicant, as well as his witnesses, have the option to make appearance through virtual mode, by filing an application before learned Trial Court. Upon filing of such application, the same shall be considered appropriately by learned Trial Court, more particularly, when the counsel for respondent No.1 has submitted that respondent No.1 shall not dispute about making of appearance of the witnesses, through virtual mode.

Considering the aforesaid fact situation, no case is made out for acceptance of the application. Hence, the transfer application is hereby dismissed.

05.05.2025

Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No