

SUPREME COURT OF INDIA**Bench: Justices Sudhanshu Dhulia and Prasanna B. Varale****Date of Decision: 22nd March 2024**

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. 2664 of 2023

TRANSFER PETITION (CIVIL) NO(s). 499 OF 2024

M/S ACME PAPERS LTD. ...PETITIONER(S)**VERSUS****M/S. CHINTAMAN DEVELOPERS PVT. LTD. & ORS.
...RESPONDENTS(S)****Legislation:**

Section 10, 16, 20 and 25 of the Code of Civil Procedure (CPC)

Subject: Transfer petitions involving a dispute over a Memorandum of Understanding for the purchase of land and subsequent suits filed in different jurisdictions for specific performance and declaration of MoU termination.

Headnotes:

Transfer of Civil Suit – Jurisdiction – Court considered the appropriate jurisdiction for a civil suit involving specific performance of a Memorandum of Understanding related to immovable property. The suit was filed by respondent no.1 in Sehore, Madhya Pradesh, with a counter-suit by petitioner in Calcutta, West Bengal. The Court evaluated the principles under Sections 16 and 20 of the Civil Procedure Code (CPC) to determine the competent court for adjudicating the dispute. [Paras 1-6, 8-9]

Jurisdiction Determination under CPC – held – emphasized that jurisdiction for suits concerning immovable property is primarily determined by the location of the property as per Section 16, CPC, and not by the place of execution of the agreement or the residence of the parties. Section 20, CPC, was found to be a residuary provision not applicable in the current scenario. [Para 6]

Precedence of Filing and Section 10, CPC – applied – The Court noted the application of Section 10, CPC, mandating that no court shall proceed with a trial if the matter in issue is already pending before another competent court. The precedence of filing and the consequent stay of later suits were considered vital in adjudicating the transfer petitions. [Para 7]

Decision – Transfer of Suit to Sehore, Madhya Pradesh – The Supreme Court dismissed Transfer Petition (C) No.2664 of 2023, thereby upholding the jurisdiction of the Sehore court for the suit filed by respondent no.1. Concurrently, Transfer Petition (C) No.499 of 2024 was allowed, transferring the suit filed by the petitioner in Calcutta to Sehore, Madhya Pradesh, for consolidated proceedings. [Paras 8-9]

Directive for Consolidated Proceedings – The Court directed the transfer of relevant records to the Court of Principle Judge, Sehore, and allowed the petitioner to withdraw the transferred suit or file a counterclaim in the existing suit in Sehore, Madhya Pradesh. The matter was ordered to proceed from the stage it was left at the City Civil Court, Calcutta, West Bengal. [Paras 9-11]

Referred Cases:

- Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791
- Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care (P) Ltd., (2004) 6 SCC 756

J U D G M E N T

PRASANNA B. VARALE, J.

1. This transfer petition has been filed by the petitioner seeking transfer of RCS No.128/A/2023, filed by respondent no.1, from the Court of District Judge, Sehore, Madhya Pradesh to the City Civil Court, Calcutta, West Bengal.
2. The parties had entered into a Memorandum of Understanding (hereinafter referred to as “MoU”) on 10.11.2022 whereby respondent no.1 had agreed to purchase land admeasuring an area of approx. 74.06 acres (“suit property”) on an “*as is whatever there is*” basis for a consideration of Rs.20,69,92,000/-. It was also agreed that the petitioner would obtain all necessary approvals/no objection certificates (“NOCs”) for the transfer of suit property and in case of unprecedented delay in obtaining the same, the petitioner would be at liberty to deal with suit property by treating the MoU as cancelled and/or terminated.
3. Subsequently, the petitioner could not obtain the necessary approvals required for selling the suit property and thus, the respondents filed a suit for specific performance of the MoU, which the petitioner now seeks to transfer to Calcutta where they have already filed a suit for declaration that the MoU stands terminated and is incapable of being acted upon.

Both the parties are before us with different Transfer Petitions, seeking transfer of the case filed by the opposite party.

4. Counsel for the petitioner submits that the MoU was executed in Calcutta and the suit filed by them goes to the root of the matter, i.e., validity and enforceability of the MoU. It is contended that the respondent’s suit for specific performance would only arise if the agreement is valid. As such, the reliefs sought by the petitioner are required to be decided first and cannot be raised as an issue before the District Judge, Sehore as it is already an issue raised by them in their suit.

Per contra, counsel for respondent no.1 submits that the question of the existence of the MoU or the location where it was entered into has no nexus

with the choice of jurisdiction. Whereas, the existence of the MoU and its specific performance are intrinsically connected and relate directly to the suit property, which is located in Sehore, Madhya Pradesh. Further, it is contended that the petitioner has filed other suits in Sehore and is also appearing in a matter before the Debt Recovery Tribunal, Jabalpur, Madhya Pradesh in connection with the suit property.

5. We have heard the learned counsel for the parties and have perused the material on record.

6. It is an admitted fact that the suit property is situated in Sehore, Madhya Pradesh. Section 16, CPC *inter alia* provides that suits for the determination of any other right to or interest in immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Thus, the petitioner's reliance on the cause of action arising in Calcutta due to the MoU being executed at Calcutta is completely erroneous in view of Section 20, CPC, which provides that a suit can be initiated where the defendant resides or cause of action arises is a residuary provision only applicable to cases beyond those in Section 15 to 19, CPC. Thus, this Section has no application in this case as when the subject matter of the MoU is the suit property located at Sehore. This Court in ***Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791*** held the following:

"21. A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section, "subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions..."

7. All the same, the suit filed at Sehore, Madhya Pradesh was earlier in time. A perusal of the materials placed before us would show that respondent no.1 filed its suit on 12.05.2023 at Sehore, Madhya Pradesh and the petitioner filed its vakalatnama therein on 28.06.2023. Thereafter, on 20.07.2023 the petitioner filed its suit in Calcutta and two days later the petitioner filed its written statement in Sehore.

Section 10, CPC *inter alia* mandates that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue between the parties, litigating under the same title,

where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. It has been incorporated to avoid multiplicity of proceedings on issues which are directly and substantially in issue in the previously filed suit.

In ***Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care (P) Ltd., (2004) 6 SCC 756*** this Court has held that while considering a Transfer Petition under Section 25, CPC regard must be had for Section 10, CPC. This is what was said:

“5. The suit at Nashik has been instituted first in point of time. By reference to Section 10 CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction under Section 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is “expediency for ends of justice”. The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case.”

It is also of relevance that since the suit property is located in Sehore, all property records and government documents would be present in the vicinity, including most witnesses. Further, it appears from the counter affidavit that the suit property is mortgaged to Bank of Baroda, through its Bhopal branch and an auction has taken place on the strength of which the Bank, as well as the auction purchasers have been impleaded in the suit filed at Sehore vide Order dated 01.11.2023.

8. Under these circumstances, we dismiss Transfer Petition No.2664 of 2023.
9. Resultantly, Transfer Petition (Civil) No. 499 of 2024 is allowed and hence TS No.1346 of 2023 pending before the City Civil Court at Calcutta, West Bengal is hereby transferred to the Court of Principle Judge, Sehore, Madhya Pradesh. The petitioners (in T.P.(c) No.2664/2023) are at liberty to withdraw the suit that has been transferred and file a counter claim in RCS

No.128/A/2023 before the Court of Principle Judge, Sehore, Madhya Pradesh in accordance with law.

10. After the matter is transferred to Court of Principle Judge, Sehore, Madhya Pradesh, the transferee Court shall give fresh notice to all the parties by fixing a date and the aforesaid matter shall proceed at the transferee Court from the stage it was left at the City Civil Court, Calcutta, West Bengal.
11. The records of the case be transferred to the transferee Court forthwith.
12. Pending applications, if any, stand disposed of.

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