

Mr. Sarwar Raza, learned counsel for the non applicant states that the matter is part heard before the Calcutta Bench of NCLT and both the learned counsel are the arguing counsel there as well. A copy of the order dated 13.02.2017 has been placed before us. It is self explanatory and the same reads as under:

“ The Ld. Lawyer on behalf of the petitioner as well as the petitioner himself is present in the Court today. The petitioner (non-applicant respondent) has concluded his part of argument some time on 28-11-2016 and since then the matter is pending for argument from the side of the respondent (applicant herein).

The matter was also taken up for settlement on 22-12-2016, as both the parties shown their intention to compromise but for some or the other reason, the settlement could not be arrived at as the respondent did not agree as reflected in the order dated 22-12-2016.

The matter was fixed for final hearing but again today, the Ld. Lawyer appearing on behalf of the respondent sought for adjournment of the case on the ground that she is going to file one petition for getting the case transferred to the Principal bench, National Company Law Tribunal, Delhi where the other cases are pending between the same parties.

The Ld. Lawyer of the petitioner has vehemently objected to the prayer made by the Ld. Lawyer of the respondent as he has already concluded his part of argument some time on 28-11-2016 and during that time the respondent had never shown her intention with regard to the transfer and/or consolidation of the cases in the Principal Bench, NCLT, Delhi, where number of cases are pending between the same parties.

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The Ld. Lawyer of the respondent submitted that the process of compromise was going on earlier also, as such she has not proposed to transfer the instant case at the Principal Bench, Delhi. Now, when the settlement has failed, she is intending to get his matter also transferred to the Principal Bench, Delhi.

The respondent is given the last opportunity to argue.

The Ld. Lawyer of the petitioner submitted that he has to spend around Rs. 1 lac while coming all the way from Delhi to Kolkata for attending the matter in the Court and staying in Kolkata along with the petitioner.

Apart from that, the petitioner is also not pulling well and suffering from a number of ailments being old.

In view of the above, a cost of Rs. 80,000/- (Rupees eighty thousand only) is imposed on the respondent to be paid to the petitioner by the next date i.e. before start of the hearing.



Fix the matter on 06.03.2017. The date is given as per the convenience and on the pressure of the Ld. Lawyer of the respondent.”

A perusal of the aforesaid order would show that the non applicant, (who is petitioner before the NCLT, Kolkata Bench) has already concluded his argument and it is now posted for hearing the argument of the applicant – respondent on 06.03.2017. For not arguing the matter the Kolkata Bench of NCLT has also imposed a cost of Rs. 80 thousands on the applicant – respondent. The matter is now posted for hearing of the rest of the argument on 06.03.2017.

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The principle for transferring the cases is well settled. It is equally well settled that a part heard matter cannot be shifted from the one territorial jurisdiction to another territorial jurisdiction. Allowing the transfer in such circumstances may result into an ugly tendency of forum shopping which is totally prohibited and is impermissible. Therefore, we reject the prayer made by the applicant – respondent and expect that the argument would be advance by the applicant – respondent on the date fixed by the Kolkata Bench of NCLT.

For reasons aforementioned this application fails and the same is dismissed with cost of Rs. 25,000/-.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

(R. VARADHARAJAN)
MEMBER (J)