

CHAPTER 13

Transfer and Withdrawal of Suits and Appeals

- 1. Transfer of part-heard cases**—Section 24 of the Code of Civil Procedure provides for the transfer of suits, appeals or other proceedings pending in subordinate Courts. Although this power of transfer may be exercised at any stage of a suit, appeal or other proceedings, no part-heard case should be transferred from one Court to another, if this can possibly be avoided.
- 2. Courts requesting for transfer should record reasons**—In submitting applications to superior authority for the transfer or withdrawal of cases under Section 24 of the Code of Civil Procedure, Civil Courts should always record a short statement of the case, with their reasons for making the application.
- 3. Transfer of a case in which the Judge is personally interested or in which the order appealed against was passed by him**—Whenever a suit or appeal comes before a Judge in which he is personally interested, or in which the order appealed against was passed by himself a report should at once be made to the Superior Court concerned with a view to the case being transferred to another Court.
- 4. Parties should be informed of the date for appearance before District Judge when at Court requests for transfer. District Judge to inform parties the date for appearance before the Court to which he transfer the case**—If a subordinate Court sends a case to the District Judge with an application for its transfer, on the ground that it is beyond his jurisdiction or on similar grounds it should give the parties the date for appearance before the District Judge. The District Judge will either hear the matter on that day, or when this is not possible, give another date. If orders for transfer are passed, the parties present should be informed of the Court to which the case has been transferred and a date should be fixed by the District Judge, for their next appearance in new Court.
- 5. On transfer of a case to another Court parties to be informed of date for appearance before the Court**—If an application is made by one of the parties for a transfer and orders of transfer are passed after notice to the other side, the parties present should similarly be informed by the District Judge of the Court to which the case has been sent and the date on which they should appear before it.
- 6. Records to be sent immediately to the Court to which case is transferred**—When is a case is transferred by administrative order from one Court to another, the Presiding Officer to the

Court from which it has been transferred shall be responsible for informing the parties regarding the transfer, and of the date on which they should appear before the Court to which the case has been transferred. The District Judge passing the order of transfer shall see that the records are sent to the Court concerned and parties informed of the date fixed with the least possible delay. When a case is transferred by judicial order the Court passing the order should fix a date on which the parties should attend the Court to which the case is transferred.

7. Withdrawal of a suit by plaintiff—A plaintiff is at liberty to withdraw from a suit at any time (subject to any order as to costs that the Court may pass), but if he wishes to reserve his right to sue again, he must obtain permission of the Court under Order XXIII, Rule I, Civil Procedure Code. Permission can only be granted on the grounds specified in the rule. The words “other sufficient grounds” have been interpreted to mean grounds of the same nature as the grounds specified in clause (a) of sub-rule 2 of Rule 1 of the Order. The mere fact that plaintiff has not been able to produce adequate evidence to establish his case is no justification for granting permission under this rule.

8. District Judge may transfer a case to Additional District Judge—A District Judge may with due regard to convenience, transfer a case under Section 24, Civil Procedure Code to an Officer in another district when that officer is acting as an *ex-officio* Additional District Judge of the district from which the case is to be transferred. In such case no reference to High Court is necessary except when any difficulty is experienced in making transfers.

9. District Judge can transfer or withdraw an appeal without reference to High Court—The District Judge can, without reference to the High Court transfer or withdraw any appeal pending in the Court of the Additional or *ex-officio* District Judge.

But he cannot exercise jurisdiction in such manner as to set aside the orders of the High Court. Thus an appeal once transferred under the orders of the High Court cannot be retransferred without further orders from the High Court.

10. Separate record of transfer applications—Applications for transfer of civil cases and the proceedings therein should form files separate from the record of the main case sought to be transferred and the records of such transfer applications should be separately consigned to the Record Room. The original order on transfer application should be kept on the record of the transfer proceedings and a copy of this order should be sent to the Court concerned.

11. Transfer of cases on administrative grounds—Cases transferred by a Court of its own motion or on administrative grounds should not be entered in any register and it is unnecessary to keep any statement of cases so transferred. It is not necessary in such cases to make any separate record of the transfer proceedings and the original order of transfer instead of a copy, may be sent to the Court concerned.