**AFFIDAVIT IN SUPPORT OF THE APPLICATION**

IN THE COURT OF THE DISTRICT JUDGE....................

Affidavit

   in

Civil Misc. Application.................... No..................... of 19....................

under section 24 of the Code of Civil Procedure.

A. B.................................................................... Plaintiff

*versus*

C. D................................................................ Defendant

Affidavit of.................... son of.................... aged about.................... years, resident of.................... Post Office....................

I, A. B. deponent abovenamed, solemnly state and affirm as follows:

1. That I am one of the plaintiffs in the abovenoted suit and as such am fully acquainted with the facts deposed to below:

2. That I have been read over and explained the contents of the accompanying application for transfer of the case, and those of this affidavit and have fully understood the same.

3. That contents of paras 1 to 4 of the accompanying application and those of paras 1 and 2 of this affidavit are true to my knowledge and those of para 5 of the accompanying application are based on legal advice which I believe to be true. That no part of this affidavit is false and nothing material has been concealed.

Verified this.................... day of.................... 19.................... at....................

Deponent

**CASE LAW**

***Section 24***

**WITHDRAWL OF CASE TO HIGH COURT GROUNDS FOR SUITS BEING SOCIALLY SENSITIVE AND AFFECTING CONSIDERABLE SECTION OF PUBLIC.**

Where some socially sensitive suits affected considerable section of the public and massive volume of oral evidence was recorded. Held that withdrawal could not be rejected by exaggerating importance of demeanour of witnesses observed by the trial judge. Expeditious termination of litigation is of vital importance in such cases.1

**APPLICABILITY TO DIVORCE PROCEEDINGS.**

Section 21A of Hindu Marriage Act, 1955 applies to the special cases mentioned under that section for transfer of divorce petition but for other matters section 24 of C. P. C. will apply for transfer of divorce petition.2

**POWERS OF HIGH COURT AND DISTRICT COURT TO TRANSFER CASES.**

The power of transfer under this section, of a suit, appeal or other proceedings by a High Court or a District Court to a Court within their respective jurisdiction is a very effective remedy and no fetters should be placed upon it on grounds of want of territorial jurisdiction of the transferee Court.3

Where the District Judge dismissed the application for transfer of a suit, the applicant did not went up in revision to the High Court but filed a fresh application under this section, held that the application was maintainable.4

**GROUNDS FOR TRANSFER OF SUITS.**

No relief can be granted to a party taking part and taking benefits under orders from the Court.5

Where in the main suit itself, the constitutionality of section 80 of the Code is not challenged, directly or indirectly, nor any issue on the point framed on the pleadings of the parties, the application for the transfer of a case of the High Court for deciding validity of S. 80 cannot be sustained.6

**CONSIDERATIONS FOR THE EXERCISE OF JURISDICTION TO TRANSFER A CASE.**

The jurisdiction under this section should be exercised with extreme caution and the Court cannot stop the plaintiff going on with his suit when he has a right of action as against the defendant. The search should be for justice and the Court must be satisfied that justice could more likely be done between the parties by refusing to allow the plaintiff to continue his suit in the forum of his choice.7

**SMALL CAUSE COURT.**

Court of Small Causes includes Court invested with small cause powers.8

**FACTORS TO BE TAKEN INTO ACCOUNT FOR TRANSFER OF A CASE.**

Transfer of a suit should not be made in a lighthearted fashion. It should be particularly in the case when the party seeking the transfer is the very same person who opted one of the places available to him for instituting the suit.

Convenience of other parties and expenses likely to be incurred by them should also be considered.

The belated nature of the application for transfer and the fact that several proceedings have been gone into in the suit.

These are the factors which the Court has to weigh for declining an application for transfer.9

**ALLEGATION AGAINST A JUDGE WHEN CAN BE TAKEN INTO ACCOUNT.**

Every effort should be made that the applicant gets a fair and impartial trial, but at the same time a litigant also should not be allowed to make wanton and rash allegations against the subordinate judiciary, which discharges onerous duties in a very creditable manner, despite very many disadvantageous factors.

If there is a reasonable apprehension on the part of a litigant about his getting justice from a particular judicial officer, that would certainly be taken serious note of while considering an application for transfer.

But, however, a transfer would not be readily granted for any fancied notion of a litigant. The duty of all concerned is to be circumspect in making allegations about the presiding officers of a court.10

**Necessary or proper party**

Order 1, Rule 10, Section 24

The suit filed by the appellant against the so-called tenant on the basis of the rent note is a collusive one. Be that as it may, in a suit between the appellant and his alleged tenant, the respondents cannot be said to be necessary or proper parties.10A

1. Baselius Mar Thoma Mathews v. Paulose Mar Athanasius, A.I.R. 1979 S.C. 1909: (1980) 1 S.C.R. 250: (1980) 1 S.C.C. 601: (1980) 1 S.C.J. 179.

2. Smt. Kamna v. Dr. Prakash Chand Sohane, M.P., 1985 (1) C.C.C. 1021 (1022).

3. P. Madhavan Unni v. M. Jayapandia Nadar, (1971) 2 M.L.J. 309 (F.B.).

4. K. V. Soorayya Chetty v. P. Dasaratha Naidu, 1996 Andh. W. R. 384.

5. Banarsi Prasad Sharma v. B. Choudhry, A.I.R. 1972 Cal. 291.

6. V. Bhave v. Union of India, A.I.R. 1972 Pat. 158.

7. Laxmibai Gulabrao v. Martand Daulatrao Deshmukh, (1972) 74 Bom. L.R. 773.

8. Pitamlal v. Hargovanbhai, A.I.R. 1972 Guj. 119: 13 Guj. L.R. 527.

9. T.V. Eachara Warrier v. State of Kerala, A.I.R. 1985 N.O.C. 102 (Ker.): I.L.R. (1985) 1 Ker. 127.

10. T. V. Eachara Warmer v. State of Kerala, A.I.R. 1985 N.O.C. 102 (Ker.): I.L.R. (1985) 1 Ker. 127.

10A. Nagappa v. Dodda, AIR 2000 SC 3567.