



2026:AHC:53013

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 1963 of 2026

Shiv Shankar

.....Petitioner(s)

Versus

Mahavir @ Ghura Turha And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Parvez Iqbal Ansari
Counsel for Respondent(s)	:	

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Ayub Khan, holding brief of Sri Parvez Iqbal Ansari, learned counsel for the petitioner.

2. The present petition has been filed seeking to assail the order dated 01.11.2025 passed by the learned Additional District & Sessions Judge-1, Ballia in Civil Revision No. Nil of 2025 (Shiv Shankar vs. Mahavir & Others), as well as the order dated 11.09.2025 passed by the learned Civil Judge (Senior Division), Ballia, in S.C.C. Case No. 139 of 2021 (Mahavir and others vs. Gulab Chand and others).

3. The controversy arises in the backdrop of Application No. 43 Ga-2 moved by the petitioner, who is defendant no. 3 in the suit. By means of the said application, it was contended that the suit, being one for arrears of rent and eviction, was cognizable by a Court of Small Causes and, therefore, having been instituted as a regular civil suit, the plaint was liable to be returned under Order VII Rule 10 C.P.C. for presentation before the competent court.

4. The trial court, however, took note of the factual position that although the suit was initially instituted as a regular original suit, the same had subsequently been transferred, in pursuance of orders passed by the learned District Judge, to the Court of Civil Judge (Senior Division), Ballia, which was vested with the powers to try Small Causes cases. In view thereof, the court held that the defect, if any, stood cured and directed that the case be registered and proceeded with as a S.C.C. suit, consequently disposing of Application No. 43 Ga-2.

5. The revision preferred against the said order has been dismissed by the Revisional Court, affirming the reasoning of the trial court.

6. The questions which arise for consideration are whether, in a case where a suit is instituted before a court lacking jurisdiction, return of plaint under Order VII Rule 10 C.P.C. is the only permissible course; whether the District Judge is empowered under Section 24(5) C.P.C. to transfer such a suit to a competent court and if such transfer cures the defect of jurisdiction; whether absence of prior notice before passing an order of transfer vitiates the proceedings; and whether the impugned orders suffer from any jurisdictional error warranting interference under Article 227 of the Constitution of India.

7. The principal submission advanced on behalf of the petitioner is that the provisions of Order VII Rule 10 C.P.C. are mandatory in nature and once it is found that the court in which the suit was instituted lacked jurisdiction, the plaint must necessarily be returned for presentation before the proper court, and that the subsequent transfer of proceedings cannot cure such defect. It is also contended that order of transfer passed under Section 24 stands vitiated on account of absence of prior notice.

8. In order to appreciate the contention, it is necessary to examine the scope and object of Order VII Rule 10 C.P.C. The said provision embodies the principle that a plaint must be presented before a court of competent jurisdiction and where the court in which it is filed lacks territorial, pecuniary or subject-matter jurisdiction, it is obligated to return the plaint for presentation before the proper forum. The provision is procedural in nature and is intended to ensure that adjudication takes place before a court legally empowered to entertain the *lis*.

9. However, the provision cannot be construed in isolation. The Code of Civil Procedure provides a comprehensive procedural framework, within which the power of transfer under Section 24 C.P.C. occupies a significant place. Section 24 confers wide and plenary powers upon the District Judge to transfer or withdraw any suit, appeal or proceeding at any stage. Sub-section (5) of Section 24 expressly provides that a suit or proceeding may be transferred from a court which has no jurisdiction to try it.

10. The language of Section 24(5) is clear and unequivocal and manifests the legislative intent that the absence of jurisdiction in the court of origin does not operate as a bar to the exercise of the power of transfer. The provision

enables the District Judge to ensure that proceedings are brought before a competent forum without necessitating a return and re-presentation of the plaint.

11. It is in this context that the interplay between the provisions of Order VII Rule 10 C.P.C. and the power of transfer under Section 24 C.P.C. assumes significance. The legal position which emerges is that it is not mandatory in every case that the plaint must necessarily be returned for presentation before the competent court. It is equally open to the District Judge, in exercise of powers under Section 24 C.P.C., to transfer a suit from a court lacking jurisdiction to a court competent to try the same, and such transfer constitutes a valid and legally sustainable mode of curing a defect of jurisdiction.

12. The provisions contained in Order VII Rule 10 and Rule 10-A C.P.C. are essentially procedural mechanisms intended to facilitate proper adjudication before a competent forum. These provisions cannot be read as curtailing or overriding the plenary powers of transfer vested in the District Judge under Section 24 C.P.C. In fact, Section 24(5) C.P.C. expressly contemplates that a suit or proceeding may be transferred from a court which has no jurisdiction to try it, thereby recognizing transfer as an alternative and equally efficacious mode of addressing a jurisdictional defect.

13. It is, therefore, not mandatory that in every case where a defect of jurisdiction is found, the plaint must be returned. Where the defect stands effectively remedied by a lawful transfer to a competent court, insistence on return of plaint would amount to elevating form over substance and would defeat the very purpose of procedural law.

14. Viewed in this light, once a suit has been lawfully transferred to a court competent to exercise jurisdiction, the very purpose underlying Order VII Rule 10 C.P.C. stands achieved. Insistence upon return of plaint thereafter would be a matter of mere formality, which does not advance the cause of justice but rather results in avoidable delay and multiplicity of proceedings.

15. It is a settled principle that procedural law is a handmaid of justice and is designed to advance the cause of adjudication rather than to obstruct it on technical grounds. Therefore, where the defect of jurisdiction stands effectively remedied by a valid order of transfer and no prejudice is shown to have been caused to any party, such transfer cannot be faulted merely on

the ground that the plaint was not formally returned.

16. The legal position that thus emerges is that return of plaint under Order VII Rule 10 C.P.C. is not the sole or mandatory course in every case of jurisdictional defect, and a lawful transfer under Section 24 C.P.C. to a competent court sufficiently cures such defect and subserves the ends of justice.

17. In the present case, the learned District Judge, upon noticing the jurisdictional issue, exercised powers under Section 24 C.P.C. and transferred the suit to the Court of Civil Judge (Senior Division), Ballia, which was competent to try the matter as a Small Causes case. The transferee court thereafter registered the case accordingly and proceeded with the trial.

18. Thus, the defect, if any, in the initial institution stood cured by the transfer. The proceedings thereafter have continued before a court having lawful jurisdiction, and the very object underlying Order VII Rule 10 C.P.C. stands fulfilled.

19. The contention regarding absence of notice prior to transfer also does not merit acceptance. Though Section 24 contemplates notice and opportunity of hearing, such requirement cannot be treated as inflexible in all circumstances. The determinative factor is whether any prejudice has been caused.

20. The requirement of notice prior to transfer, though ordinarily contemplated, cannot be treated as inflexible in all circumstances. Where the party objecting to the transfer was already aware of the jurisdictional issue and had itself raised objections regarding jurisdiction, and where no demonstrable prejudice has been caused, the transfer cannot be invalidated solely on the ground of absence of prior notice.

21. The record reflects that the petitioner had knowledge of the nature of proceedings and, after transfer of the case, actively participated in the trial by filing written statement and leading evidence. The application under Order VII Rule 10 C.P.C. was moved at a belated stage. The transfer cannot be invalidated merely on the ground of absence of prior notice, particularly when no prejudice is demonstrated.

22. It has also been rightly observed by the Revisional Court that the order

rejecting Application No. 43 Ga-2 is essentially interlocutory in nature and does not occasion any failure of justice. The scope of revisional jurisdiction being limited, no interference was warranted.

23. Upon an overall consideration of the matter, this Court finds that the courts below have correctly appreciated both the factual and legal aspects of the case. The approach adopted is in consonance with the settled principles governing procedural law and jurisdiction.

24. No jurisdictional error, illegality or perversity has been demonstrated so as to warrant interference under Article 227 of the Constitution of India. No prejudice has been shown to have been caused to the petitioner.

25. Where a suit is instituted before a court lacking jurisdiction, it is not mandatory that the plaint must invariably be returned under Order VII Rule 10 C.P.C. The District Judge, in exercise of powers under Section 24(5) C.P.C., is fully competent to transfer such a suit to a court having jurisdiction to try the same, and such transfer constitutes a valid mode of curing the defect of jurisdiction. The provisions of Order VII Rule 10 and Rule 10A C.P.C. are procedural in nature and cannot be construed as limiting or overriding the plenary power of transfer vested under Section 24 C.P.C. Where the defect of jurisdiction stands effectively remedied by a lawful order of transfer and no prejudice is caused to any party, insistence upon return of the plaint would amount to elevating form over substance. The absence of prior notice under Section 24, by itself, does not vitiate the order of transfer in the absence of demonstrable prejudice.

26. The petition lacks merit and is accordingly **dismissed**.

March 16, 2026
RKK/-Vinod.

(Dr. Yogendra Kumar Srivastava,J.)