

MANU/DE/2811/2005

**Equivalent Citation:** AIR2006Delhi115, 127(2006)DLT300**IN THE HIGH COURT OF DELHI**

TR.P. (C) Nos. 17-18/2004 and 9, 10, 15 and 20/2005

Decided On: 29.09.2005

Appellants: **Aviat Chemicals Pvt. Ltd. and Anr.**  
**Vs.**Respondent: **Magna Laboratories (Gujarat) Pvt. Ltd. and Anr.****Hon'ble Judges/Coram:**

Swatanter Kumar, J.

**Counsel:**

Sudhir Chandra, Sr. Adv., Hemant Singh, Sachin Gupta, Achintya Dvivedi and Dushyant K. Mahant, Advs. in TRP 9/2005, Valmiki Mehta, Sr. Adv., Pravin Anand, Nikhil Krishnamurthy, Shwetachree Mujumdar and Amol Sahni, Advs. in TRP No. 17 and 18/2004, Hemant Singh and Dushyunt K. Mahant, Advs. in TRP No. 10 and 15/2005 and Ravi Gupta and Ankit Jain, Advs. in TRP No. 20/2005 and Sanjeev Sachdeva, Priya Puri and Preet Pal Singh, Advs. in TRP No. 17/2004

For Respondents/Defendant: S.K. Taneja, Sr. Adv., Rajesh Gupta and T.K. Tiwari, Advs.

**Subject: Civil****Acts/Rules/Orders:**

Code of Civil Procedure, 1908 (CPC) - Section 24, Code of Civil Procedure, 1908 (CPC) - Section 24(1), Code of Civil Procedure, 1908 (CPC) - Section 24(2), Code of Civil Procedure, 1908 (CPC) - Section 24(3), Code of Civil Procedure, 1908 (CPC) - Section 24(4), Code of Civil Procedure, 1908 (CPC) - Section 24(5), Code of Civil Procedure, 1908 (CPC) - Section 24B, Code of Civil Procedure, 1908 (CPC) - Section 25(5), Code of Civil Procedure, 1908 (CPC) - Section 34(5), Code of Civil Procedure, 1908 (CPC) - Section 75, Code of Civil Procedure, 1908 (CPC) - Section 94, Code of Civil Procedure, 1908 (CPC) - Section 151, Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 10, Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 10A, Code of Civil Procedure, 1908 (CPC) - Order 7 Rule 10A(2), Code of Civil Procedure, 1908 (CPC) - Order 8 Rule 1, Code of Civil Procedure, 1908 (CPC) - Order 26, Code of Civil Procedure, 1908 (CPC) - Order 39 Rule 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rule 2

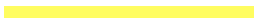

**Cases Referred:**

Vogel Media International GmbH and Anr. v. Jasu Shah and Ors., 2005 (30) PTC 51 (Del); Pushpa Kapal v. Shiv Kumar, 35 (1988) DLT 187; Shri Rail Chand v. Shri Atal Chand and Ors., 13 (1977) DLT 153 : 2nd (1978) 1 Delhi 229; Joginder Tuli v. S.L. Bhatia and Anr., (1997) 1 SCC 502; Amar Nath Swami v. Ramdeo, 2000 All.L.J. 2023; Mohamed Sali v. Mary Gonrath Fernando and Ors., AIR 1974 Madras 286; Ramesh Chand Bhardwaja v. Ram Prakash Sharma, 44 (1991) DLT 528; Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527; Padam Sen v. State of Uttar Pradesh, 1961 (1) SCR 884 : AIR 1961 SC 218; Lekha Ram Sharma v. Balar Marketing Pvt. Ltd., 2003 (27) PTC 175 (SC); Rail Chand v. Alal Chand and Ors., (1977) 13 DLT 153; Sahu Nand Ram v. Ms. Hira Devi and Ors., 1973 I.C. 495; Auto Engineering Works v. Bansal Trading Company, (2001) 10 SCC 630; Amarchand Inani v. Union of India, AIR 1973 SC 313; Rani Kusum (Smt.) v. Kanchan Devi (Smt.) and Ors., 2005 VII AD (S.C.) 192; Kailash v. Nanhku and Ors., JT 2005 (4) SC 204

**Disposition:**

Petition allowed

**Citing Reference:**

Discussed		13
Distinguished		2

**Case Note:**

**Civil - Transfer of Suit - Section 24 of Code of Civil Procedure , 1908 (CPC) - Present petition filed under Section 24 of CPC for transfer of suit which was filed for injunction in case of infringement, before present Court and for staying proceedings before Trial Court - Held, cases have been filed by respondents in Court of Competent jurisdiction - However, earlier they were transferred to**

**District Courts in view of notification and district Courts have lost pecuniary jurisdiction as a result of order of Court at behest of parties - In some cases evidence has been recorded - No prejudice would be caused to respondents if suits are permitted to be transferred by itself would be sufficient ground for ordering transfer of suits if other ingredients of Section 24 of CPC are satisfied and such an order is demanded in interest of justice - Harmonious and constructive application of above two sets of provisions of procedural law would require Court to adopt an approach which would satisfy twin objects of CPC, expeditious disposal of case and achievement of ends of justice, without causing prejudice to parties - Apparently an order of transferring suits to this Court would cause no prejudice to respondents and infringes no legal principles - Therefore no reason why petitions should not be allowed - Hence, all petitions under Section 24 of CPC allowed and suits are ordered to be transferred to this Court and tried in accordance with law**

## JUDGMENT

**Swatanter Kumar, J.**

1. By this common judgment I would dispose of the above six transfer petitions filed under Section 24 of the Code of Civil Procedure (hereinafter referred to as the Code) as the common question of law based on somewhat similar facts arise for consideration of the court in all these cases.

2. It is not necessary for the court to note facts of each case as reference to the case of Aviat Chemicals Ltd. transfer petition No. 9/2005 would be sufficient for the purposes of deciding the real controversy between the parties. Wherever the facts in regard to any of the transfer petitions need to be referred separately I would mention them. The plaintiff in the suit filed a suit being owner of the registered trademark MVI. The said trademark Along with the goodwill and reputation was stated to be assigned by defendant No. 1 in favor of the plaintiff vide assignment deed dated 26th March, 1996 for a valuable consideration. The plaintiff claimed to be the registered proprietor of trademark MVI registered under the trademark No. 186931 thereby having exclusive right to use the trademark in respect of multi vitamin preparations. The plaintiff had permitted respondent No. 1 to use the trademark for royalty payment in terms of the agreement dated 28th May, 1996. Driving the benefit of the said agreement the respondents were manufacturing and selling medical preparations under the trademark MVI as a licensee in accordance with the terms and conditions of the agreement. However, vide letter dated 22nd January, 1999 the plaintiff terminated the agreement and respondent No. 1 ceased to enjoy the benefits of the agreement. The plaintiff served a notice upon the respondents requiring them not to manufacture and sell the medical preparations/goods under the trademark MVI and also to pay the arrears of the royalty amount with interest @8%. The defendants failed to do so. Resultantly the plaintiff filed a suit being Suit No. 902/2001 for permanent injunction, damages, delivery up etc. in May 2001. The claim of the plaintiff was based upon breach and violation of the agreement which already stood terminated. Along with the suit the plaintiff had also filed an application being is No. 4359/01 wherein ex parte injunction was passed in favor of the plaintiff restraining the defendants from infringing the trademark MVI, copy of the injunction order dated 3rd May, 2001 has been annexed by the petitioners Along with the transfer petition. Against the order of injunction an appeal was filed by the defendants in the suit being FAO(OS) No. 44/2002. The appeal was finally disposed of by the order of the Division Bench dated 27th January 2003. The undertaking given by the defendants continued to be in force. Because of the increase in the pecuniary jurisdiction of this Court, Suit No. 902/2001 was transferred to the District Court, Tis Hazari, New Delhi vide order dated 28th August, 2003. Since then the suit is pending before the court of Shri N K Kaushik, Additional District Judge, Tis Hazari and the undertaking given by the defendants continued, as has been recorded in the order of the court dated 1st January, 2004. In the meanwhile the plaintiff filed an application on 20th March, 2004 for the amendment of the plaint claiming increased damages in excess of Rs. 21 lakhs. The amendment in the plaint has been allowed and the plaintiff has been directed to make the deficiency in payment of the court fee good within the time granted by the court. On 15th September, 2004 the court of the learned Additional District Judge passed the following order :

"15.9.2004

Present: Counsel for the parties

Deficit Court Fees filed.

He checked up Counsel for the defendant says that once the matter is outside the jurisdiction of the Court, the plaint is to be returned to the plaintiff. The counsel for the plaintiff wants to contest. Put up for arguments on 21st September, 2004."

The prayer in this petition under Section 24 of the Code is that the Suit No. 902/2001 pending in the court of the learned Additional District Judge be ordered to be transferred to this Court in exercise of its powers under Section 24 of the Code. It is also prayed that the proceedings before the learned trial Court should be stayed. The petition is primarily based upon argument that if the plaint is returned without continuation of the interim injunction orders and undertaking given by the respondents, the entire object and purpose of institution of the suit will be defeated. The defendant would get an opportunity to re-start manufacturing and marketing the drugs which they were enjoined from doing. It is also contended that return of the plaint and fresh filing

manupatra thereof shall require de novo trial which is likely to cause serious prejudice to the plaintiff. In these circumstances it is prayed that in the interest of justice the suit should be ordered to be transferred to this Court.

3. Once the court where the suit was validly and properly instituted and or transferred would have continued to try the suit in accordance with law but for an application for amendment filed by the plaintiff the plaintiff sought amendment of the plaint with an intention to claim higher amount of damages and consequently to increase the value of the suit for the purpose of court fee and jurisdiction. These amendments were allowed by the court and in some cases even with the consent of the defendants. As a result thereof the suit became beyond the pecuniary jurisdiction of the court.

4. The facts of the case and the order dated 15.09.2004 passed by the Trial Court indicates that the court directed the return of the plaint to the plaintiff, as the matter was outside the jurisdiction of the court when the plaintiff took adjournment. The provisions of Order VII Rule 10 now provides a more specified procedure by incorporation of Rule 10A of Order VII in relation to return of plaint. There cannot be any dispute to the fact that the court below has lost pecuniary jurisdiction to entertain and decide the suit as a result of the amendment claimed by the plaintiff. What arguments plaintiff could raise in regard to return of the plaint is hardly a matter of substance. The purpose of filing of the present petition is to avoid the order of return of plaint in contemplation with the provisions of Order VII Rule 10 and to pray before the court that the entire file may be transferred to this Court so as to avoid any automatic or by operation of procedure, vacation of the interim injunction granted by the Court. Section 24 Sub-section (5) does contemplate transfer of a case where the court has no jurisdiction to entertain and decide the suit. The provision vests power with the court, which has no jurisdiction to try it, for transferring the case. The purpose of Order VII Rule 10 is limited as it comes into play only for the purposes of return of a plaint where the court is of the opinion that the suit should have been instituted in another court. Of course, the applicant has the liberty to file an application upon intimation by the court in terms of Order VII Rule 1 OA(2).

5. The main question that comes up for consideration now is the scope and ambit of Section 24(B) of the Code. According to the petitioners the present petitions are maintainable and the relief prayed ought to be granted because of the intend of Section 25(5) is to transfer suits tried by a court of court which has no jurisdiction to entertain and decide the suit and the mere fact the court concerned has directed or is about to direct returned of the plaint under Order 7 Rule 10 of the Code cannot operate as a bar for maintainability of such a petition. It is also their contention that transfer of this case would cause no prejudice to anybody and in fact would help in expeditious disposal of the suits. On the other hand the learned Counsel for the respondents argued that the petitioners cannot invoke the provisions of Section 24(5) of the Code as when the suits were instituted in the court of learned Additional District Judge they were rightly instituted and pending before a court of competent jurisdiction. The transfer of such suit if at all could be permissible under Sub-sections (1) to (4) of Section 24 and the Sub-section (5) of Section 24 cannot be invoked. It is also the contention of the respondents that the provisions of Order 7 Rule 10 have already taken effect to before the trial Court as such the petitioners cannot be permitted to frustrate effect of the said provisions by taking rigorous to the provisions of Section 24(5) of the Code.

6. Before I proceed to discuss merit of the contentions raised by the parties in the present petition, an important fact needs to be noticed. In the case of Vogel Media International GmbH and Anr. v. Jasu Shah and Ors. MANU/DE/1185/2004 : 115(2004)DLT679 learned single Judge of this Court had taken the view that upon return of a plaint as contemplated under Order 7 Rule 10 only the plaint is returned to the plaintiff and trial would have to commence de novo and the interim orders passed even by the court of competent jurisdiction would cease to operate upon return of the plaint. It is commonly conceded at the bar that an appeal against this judgment is pending before the Division Bench of this Court and is not fixed for final hearing. Particularly when the matter is subjudice before the Division Bench, it is neither necessary nor required of this Court to examine the principles enunciated in the said judgment in the present transfer petitions. Suffice it to say that the judgment would not have a direct bearing on the matter in controversy in the present petitions on the established can one of ratio decendi. In fact in paragraph 10 of the judgment, it has been noticed by the court that the petitioners in that case had not filed any petition under Section 24(5) of the Code for transfer of the suits. In these circumstances it was made clear to the parties that this Court would not in any be examining the merit or otherwise of the contentions raised by them on the strength of the judgment of the court in Jasu Shah's case.

7. The learned Counsel for the petitioners in support of the contentions raised has relied upon the judgment of this Court in the case of Pushpa Kapal v. Shiv Kumar, MANU/DE/0098/1988 : 35(1988)DLT187 to contend that the provisions of Section 24(5) can be invoked for transfer of a suit which is pending before the court which has no jurisdiction to entertain and decide that suit. Wherein the court while interpreting Section 24 of the Code held as under:

"The learned Counsel for the plaintiff has cited before me an authority of this very court reported as Shri Rail Chand v. Shri Atal Chand and Ors., MANU/DE/0072/1977 : 13(1977)DLT153 , wherein the Commercial Sub Judge holding in a suit that he had no jurisdiction to try the same ordered the placing of the suit before the District Judge for transfer of the same to a court of competent jurisdiction. That suit had been pending for a period of ten years and there was a long trial before the Commercial Sub Judge directing the placing of the

manupatra case before the District Judge for transfer to another court was wrong as he had no jurisdiction to give such direction. It was further held that it was not in the interest of justice if the plaint were to be returned to the plaintiff and the case to be tried all over again when there had already been a long trial and the case had been pending for a period of ten years. Ultimately, advertent to Sub-section (5) of Section 34 of the Code of Civil Procedure it was held as following (at page 232):-

"This is a new power which can be most usefully exercised in the case. Hence, although the Commercial Sub Judge did not have jurisdiction to try the suit, this is a suitable case which should be transferred under Section 24 of the Code from the court of Commercial Sub Judge to the Court of the District Judge."

The contention of the learned Counsel for the defendant that after the passing of the order dated 11th January, 1998 ordering the return of the plaint to the plaintiff for presentation to the court of the District Judge this suit cannot be said to be pending in this Court for which reason there can arise no question of its transfer by this Court to the court of the District Judge under Sub-section 1(a) of Section 24, is not correct and cannot, be accepted inasmuch as, as already pointed out above, the plaintiff while appearing before the Deputy Registrar on 14th January, 1988 did not receive back the plaint but instead filed this application under Section 24 for the transfer of the suit by this Court to the court of the District Judge, as a result of which the suit continued pending in the High Court even through the High Court did not have the pecuniary jurisdiction to try it.

4. In view of what has been stated above, I order the transfer of this suit to the Court of the learned District Judge who shall decide the suit himself or assign it to any other Additional District Judge for this purpose. No order as to costs. This disposes of this application. Parties are directed to appear before the learned District Judge on 16th May, 1998."

8. It is contended on behalf of the petitioner that initial date of presentation of the plaint before the court of competent jurisdiction is the material date for determining pecuniary jurisdiction of the court and, depending on the facts and circumstances of the case, the court could direct that the suit be proceeded from the stage at which the suit stood transferred to another court of competent jurisdiction because of increase in pecuniary jurisdiction of the suit. Loss of pecuniary jurisdiction would lead to two courses open to the court in law-one under Order 7 Rule 10 of the Code of Civil Procedure while another under Section 24 of the Code to the court of competent jurisdiction to pass such an order. Prejudice and interest of justice would be the guiding factors before the court for determination of such an issue. In this regard, reliance is placed upon the judgment of the Supreme Court in the case of Joginder Tuli v. S.L. Bhatia and Anr., MANU/SC/1010/1997 : (1997)1SCC502 , judgment of Allahabad High Court in the case of Amar Nath Swami v. Ramdeo, 2000 All L.J. 2023 and judgment of the Madras High Court in the case of Mohamed Sali v. Mary Gonrath Fernando and Ors., MANU/TN/0116/1974 : AIR 1974 Mad 286. The respondents on the contrary relied upon Ramesh Chand Bhardwaja v. Ram Prakash Sharma, MANU/DE/0040/1991 : AIR1991Delhi280 argued that once the amendment application was allowed the provisions of Section 24 would have no jurisdiction as further proceedings in the suit would only be controlled by the provisions of Order 7 Rule 10 of the Code and return of the plaint in connection with the such provisions is only the sequence in law as such the present petitions are an abuse of the process of the court and is without jurisdiction. Whether it is Section 24 or the provisions of Order 7 Rule 10 of the Code both of them have fallen in the domain of procedural law the intend of the procedural law is always to achieve the comments of justice and not to frustrate the same. The law of procedure is a mission to achieve an end and not an end in itself so as to throttle the progress of the proceedings in a manner which would be prejudicial to the very administration of justice and expeditious disposal of the suits.

9. In the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, MANU/SC/0056/1961 : AIR1962SC527 , the Supreme Court while describing the scope of inherent powers of the Court to do justice with the aid of the specific provisions of the Code, the Supreme Court held as under:-

"It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribed the circumstances in which the temporary injunction can be issued, ordinarily the court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercising of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.

(19) These is nothing in Order XXXIX Rules 1 & 2, which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those rules. The rules only provide that in circumstances mentioned in them the Court may grant a temporary injunction.

(20) Further, the provisions of Section 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code. Section 151 reads:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

(21) A similar question about the powers of the Court to issue a commission in the exercise of its powers under Section 151 of the Code in circumstances not covered by Section 75 and Order XXVI, arose in *Padam Sen v. State of Uttar Pradesh*, MANU/SC/0065/1960 : 1961CriLJ322 and this Court held that the Court can issue a commission in such circumstances. It observed at page 887 (of SCR): (at p.219 of AIR) thus:

"The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and, Therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code, when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature."

These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of those powers is not because those powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justice."

10. The principles enunciated above have been reiterated with approval by the Supreme Court in its subsequent judgment and have been consistently followed by the High Court. Judicial discretion is to be exercised and provision of a statute of the Code are to be interpreted in a manner which would further the cause of justice rather than the one which would frustrate the same. The entire scheme underlining the code is intended to do substantial justice and decide the suits expeditiously. The provisions of Section 24(5) are intended to transfer a suit where it is being tried or is pending at any stage before a Court of no jurisdiction. The provisions of Order 7 Rule 10 are to deal with a situation where the Court normally, initially or even after representation of a plaint has no pecuniary jurisdiction and such plaint ought to be filed in some other Court. Both these provisions are to be construed harmoniously and they are not destructive of each other. Merely because the Court has lost pecuniary jurisdiction and proceedings under Order 7 Rule 10 or 10(a) are pending before the Court per se will not oust the jurisdiction of the Court to pass an order Section 24 of the Code. Loss of pecuniary jurisdiction may result from operation of law or by an act of a party by its own violation. The present cases are typical example of such class of cases. These suits were pending before this Court and after coming into force of the notification dated 16th July, 2003, the suits were transferred to the District Court because of increase in pecuniary jurisdiction of this Court. Subsequently, the parties prayed for amendment which, as already noticed, was allowed by the Court of Competent Jurisdiction on merits, in light of the judgment of the Supreme Court in the case of *Lekha Ram Sharma v. Balar Marketing Pvt. Ltd.* MANU/SC/0711/2003 : 2003(27)PTC175(SC) and even with the consent of the parties. Such amendment resulted in increase in valuation of the suit for the purposes of court fee and jurisdiction and consequent increase in the pecuniary value. As the District Courts then lost their pecuniary jurisdiction to entertain and decide the suits the proceedings under Order 7 Rule 10 were pending. The Court cannot lose sight of the fact that for years the suits have progressed before this Court and then on transfer before the trial Court and now are intended to be transferred to this Court. The suits would have to come to this Court without exception. Even if it is assumed for the sake of arguments that plaints would be returned to the plaintiff for being presented to this Court and all the orders, interim or otherwise passed would be rendered ineffective or inoperative or the suits are transferred Along with the proceedings to this Court so as to prevent de novo trial as well as save the valuable time of the Court, are the consequences, which are bound to flow as a result of exercise of discretion by the Court. In the case of *Ramesh Chand Bhardwaja* (supra), the court expressed the view that, since admittedly the plaint has been returned under the orders of the trial Court and there is no plaint or suit pending in the court subordinate to the High Court, the provisions of Section 24 of the Code could not be invoked. Firstly, in the present case, unlike *Bhardwaja* case, the plaintiffs have admittedly not received the plaints from the subordinate court for its presentation in the High Court. In some of the cases, the plaintiffs have filed an application while in others, they have sought an adjournment from the learned trial Court as to whether the complete proceedings should be sent to this Court along with the Order 7 Rule 10. These proceedings are pending and, in law, it cannot be stated that the proceedings in the suit have fully and finally terminated and the court below has become functus officio. Once these applications are pending or that the court has adjourned the cases for some consideration or the other, the proceedings, even if it could be said

manupatra  
stricto sensu that suit is not pending before the court, even then it cannot be stated that no proceedings are pending before the trial Court. The provisions of Section 24 of the Code are applicable not only to a suit but even to proceedings pending before the subordinate court. It may be relevant to notice at this stage itself that in some of the cases, the proceedings before the trial Court were stayed by interim orders passed by different Benches of this Court. May be, the provisions of Section 24 on the one hand and order 7 Rule 10 and 10(a) on the other of the Code may not be read together or applied to the facts of the case to the suit at one and the same domain. Normally, both these powers would fall in the domain of different jurisdictions. As already noticed, these are the two different courses open to the courts at the relevant time and they could be applied to the facts of a case keeping in view element of prejudice, adherence to the law of procedure, equity and attainment of ends of justice. Once suit and/or any other proceedings are pending before a trial Court, at any stage, the powers of this Court under Section 24 could be invoked and cases transferred to this Court from the courts having no jurisdiction. Resorting to the provisions of Section 24, despite passing of an order, would per se not tantamount to lack of jurisdiction. Recourse to one prescribed mode under the law of procedure would not bring into play the doctrine of no jurisdiction as none has a vested right in procedure, particularly when no prejudice is suffered by such a party.

11. In the case of Rail Chand v. Alal Chand and Ors., MANU/DE/0072/1977 : 13(1977)DLT153 , a Bench of this Court followed the view and methodology adopted by a Division Bench of Allahabad High Court in the case of Sahu Nand Ram v. Ms. Hira Devi and Ors., 1973 I.C. 495 and directed that plaint had to be returned because of lack of jurisdiction. But instead of return of the plaint, it was ordered that the suit be transferred from the court of Commercial Sub-Judge to the Court of District Judge. In the case of Joginder Tuli v. S.L. Bhatia (Supra), the Supreme Court approved the order of the High Court where it had directed the subordinate court to proceed with the suit from the stage at which the suit stood transferred because the trial Court had no pecuniary jurisdiction to entertain and decide the suit and had directed return of the plaint for presentation to the proper court. Their Lordships held as under:-

"Therefore, at this distance of time, he cannot be allowed to pay the court fee in this regard. Under these circumstances, the original order passed by the High Court directing the District Judge to proceed from the stage at which the suit stood transferred to the District Court appears to be correct in the circumstances. Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.

6. The appeal is accordingly dismissed. No costs."

12. The learned Counsel for appearing for the respective respondents, while relying upon the judgment of the Supreme Court in the case of Auto Engineering Works v. Bansal Trading Company, MANU/SC/1267/1999 : (2001)10SCC630 and Amarchand Inani v. Union of India, MANU/SC/0468/1972 : [1973]2SCR684 , argued that provisions of Order 7 Rule 10 would have the effect of completely ousting the jurisdiction of the court and once an order under these provisions is passed, there shall be commencement of a fresh suit upon presentation of the plaint before the court of competent jurisdiction and old suit would not continue. In this regard, they have also referred to some judgments of other High Courts. Reliance was also placed upon the judgment of this Court in Jasu Shah case (supra) to argue that return of the plaint cannot be treated as transfer petition under Section 24 of the Code. As far as Jasu Shah case (supra) is concerned, I have already stated that the principle enunciated in that case has no application to the present case, which is a petition under Section 24, as the court itself has noticed that no petition for transfer was filed in that case. Furthermore, the matter is subjudice before the appellate court. The principle enumerated in the case of Auto Engineering Works as well as Amarchand Inani case can have no dispute. Once the court finds that it lacks territorial or pecuniary jurisdiction, it should pass an order returning the plaint to the plaintiff for its presentation before the court of competent jurisdiction. In that case, the court had declined to exercise its jurisdiction under Order 7 Rule 10 and kept the matter pending. It was despite the fact that it had recorded that it had no territorial jurisdiction and still did not record the final order. In the case of Amarchand Inani case (supra), the plaint had been returned for presentation to the court of competent jurisdiction. The plaint had been taken by the plaintiff therein and was actually presented before the proper court and it was held that the presentation before the proper court was not a continuation of the suit filed before the earlier court. Both these cases would have no application to the facts and circumstances of the present case.

13. The rules of procedure are hand-made to achieve the ends of justice to adopt a micro-cosm approach to the language of these provisions, which otherwise do not imply mandatory character, would amount to frustrating the very object of procedural law. The purpose is to expedite the conclusion of the proceedings and not to scuttle the same. The process of justice dispensation demands effective participation as well as expeditious disposal. If the suits are permitted to commence de novo as a result of inevitable presentation of plaint before this Court, it would be retrograde rather than progressive. Enforcement of procedural law with rigorous accuracy would not be congenial to administration of justice if it defeats the very object of procedural law.

14. In a recent judgment, the Supreme Court in the case of Rani Kusum (Smt.) v. Kanchan Devi (Smt.) and

manupatra Ors., 2005 VII AD (S.C.) 192 emphasised the principle that merely because of provision of law is couched in a negative language implying mandatory character, the same could not be without exceptions, which again would be relatable to the facts of the case, making a satisfactory reason for carving out that exception.

15. A similar view, in relation to whether the character of provisions of Order 8 Rule 1 are directory or mandatory, it was held to be directory in the case of *Kailash v. Nanhku and Ors.*, MANU/SC/0264/2005 : AIR2005SC2441 . The counsel for the respondents have not been able to even reasonably argue what prejudice would the respondents suffer either in law or on facts; if these suits are ordered to be transferred to this Court. Learned counsel appearing for the respondents did argue that the plaintiffs are trying to delay disposal of suits and the present transfer petitions are one such attempt on their part. It may be noticed that some of the suits are stated to be fixed for hearing while in others evidence has been recorded, still some other suits are pending at initial stages. Now this Court alone would have the pecuniary jurisdiction to entertain and decide the suits because of the orders passed by the trial Court. In the event the plaints are taken back by the plaintiffs and are represented in the registry of this Court for de novo trial it would but naturally result in further delay and prejudice to parties. There would be expeditious disposal of the suits, if suits are permitted to be transferred, in the sense that all the proceedings so far lawfully taken by the court of competent jurisdiction would be protected and not treated as having invalidated in law. It is difficult to accept the reasoning that loss of pecuniary jurisdiction before a Court whether by virtue of operation of law or by act of the parties covered by an order of the Court should be permitted to vest parties with different consequences in law, particularly when one of such consequences could be adverse to the very system of expeditious disposal of suits.

16. The argument raised on behalf of the respondents that loss of jurisdiction as a result of amendment would necessarily have to be construed as no suits or proceedings are pending before the trial Court, is without any merit. I have already noticed that the provisions of Section 24 and Order 7 cover a different domain and there is no conflict between these provisions. The provisions of Section 151 would come to the aid of the Court, as no Code can possibly make provisions so as to meet every situation which may arise during the pendency of the suit. It is a situation where inherent jurisdiction of this Court would come to the aid and supply the vacuum. The inherent jurisdiction of the Court would normally be exercised in the interest of justice and for attainment of object of expeditious disposal of suits. May be it is the creation of the applicants themselves that the Court has lost pecuniary jurisdiction and the applications under Order 7 Rule 10 and 10(A) are pending or that the order has been passed for return of plaint but the plaint as a matter of fact has not been returned to the plaintiffs as of today. Thereafter interim orders in the present petitions were passed in favor of the petitioners. In these circumstances, it is difficult for this Court to hold that there is no suit or proceedings in the suit, pending before the trial Court. The Legislature in its wisdom has worded the language of Section 24 in wide terms by empowering the High Court to transfer any suit or appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it. In other words, the meaning of the word "such or other proceedings pending in any court" cannot be restricted or construed so as to exclude the proceedings as contemplated under Order 7 Rule 10, 10(A) of the Act.

17. The present are the cases which have been filed by the plaintiffs in the Court of Competent jurisdiction. However, earlier they were transferred to the District Courts in view of the notification and now the district courts have lost pecuniary jurisdiction as a result of the order of the Court at the behest of the parties. The interim orders, undertakings have continued for years together. In some cases evidence has been recorded. It will be travesty of justice if the proceedings have to commence de novo right from the stage of filing a written statement as the plaintiff would be returned only plaint, to be presented before the court of competent jurisdiction there is nothing in the provisions of Order 7 Rule 10 which on its plain reading or by necessary implication be construed as a bar to maintainability of a petition under Section 24 of the Code. These circumstances examined in light of the predicated principles of law adjunct with the fact that no prejudice would be caused to the respondents if the suits are permitted to be transferred by itself would be sufficient ground for ordering the transfer of the suits if other ingredients of Section 24 are satisfied and such an order is demanded in the interest of justice.

18. Harmonious and constructive application of the above two sets of provisions of the procedural law would require the court to adopt an approach which would satisfy the twin objects of the Code of Civil Procedure, namely, expeditious disposal of the case and achievement of ends of justice, without causing prejudice to the parties. Convenience or inconvenience of the parties would hardly be a relevant consideration for the court while laying down such a principle. Apparently an order of transferring the suits to this Court would cause no prejudice to the respondents and infringes no legal principles, and I see no reason why the petitions should not be allowed.

19. For the reasons afore-stated all the petitions under Section 24 of the Code of Civil Procedure filed by the petitioners are allowed, the suits in question are ordered to be transferred to this Court and tried in accordance with law. However, in the facts and circumstances of the case, parties are left to bear their own costs.