

[2011] 2 S.C.R. 907

NEHA ARUN JUGADAR & ANR.

v.

KUMARI PALAK DIWAN JI

(Transfer Petition (Civil.) No(s). 182 of 2011

FEBRUARY 14, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

*Code of Civil Procedure, 1908:*

*Transfer petition – Plea for transfer of motor accident claim case pending before MACT Court, UP to competent court at Pune on the ground that the U.P. Court has no jurisdiction in the matter – Held: An order of transfer of a case can be passed where both the courts, namely, the transferor court as well as the transferee court, have jurisdiction to hear the case and the party seeking transfer of the case alleges that the transferee court would be more convenient because the witnesses are available there or for some other reason it will be convenient for the parties to have the case heard by the transferee court – In a case where a party alleges that the court where the case is pending has no jurisdiction, he should apply to that court for dismissing it on this ground – There is no question of transfer of such a case – Therefore, the petitioners may apply to the MACT Court, U.P. for dismissal of the case pending before it on the ground that there is no jurisdiction in the court to hear the case, and if they do so, the court concerned to decide the application as a preliminary ground before proceeding to hear the case on merits – Jurisdiction.*

CIVIL ORIGINAL JURISDICTION : Transfer Petition (Civil)  
No. 182 of 2011.

Under Section 25 of the Code of Civil Procedure, 1908.

Vishwajit Singh, Vijay Kumar, Maheshwari, Pankay Singh

A Bisht for the petitioners.

The following order of the Court was delivered

### ORDER

B Heard learned counsel for the petitioners.

C This Transfer Petition has been filed to transfer case being MACT No. 138 of 2009 pending at the District Judge (MACT Court, Gautam Budh Nagar, U.P.) to the competent Court at Pune, Maharashtra. The petitioners allege in the petition that the MACT Court, Gautam Budh Nagar, U.P. has no jurisdiction in the matter.

D An order of transfer of a case can be passed where both the courts, namely, the transferor court as well as the transferee court, have jurisdiction to hear the case and the party seeking transfer of the case alleges that the transferee court would be more convenient because the witnesses are available there or for some other reason it will be convenient for the parties to have the case heard by the transferee court. There is no question of transfer of a case which has been filed in a court  
E which has no jurisdiction at all to hear it.

F In a case where a party alleges that the court where the case is pending has no jurisdiction, he should apply to that court for dismissing it on this ground. There is no question of transfer of such a case.

G Hence, the petitioners herein may apply to the District Judge (MACT Court, Gautam Budh Nagar, U.P.) for dismissal of the case pending before it on the ground that there is no jurisdiction in the Court to hear the case, and if they do so, the Court concerned will decide the application as a preliminary ground before proceeding to hear the case on merits.

With these observations, the transfer petition is dismissed.

H D.G.

Transfer petition dismissed.