

**Sethi v Singh**

2011 NY Slip Op 33814(U)

July 18, 2011

Sup Ct, Queens County

Docket Number: 4958/11

Judge: Howard G. Lane

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE HOWARD G. LANE  
Justice

IAS PART 6

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HARLEEN KAUR SETHI,  
  
Plaintiff,  
  
-against-  
  
TARUNJIT SINGH,  
Defendant.  
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Index No. 4958/11  
  
Motion  
Date June 7, 2011  
  
Motion  
Cal. No. 27  
  
Motion  
Sequence No. 1

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Notice of Motion-Affidavits-Exhibits...	1-5
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Upon the foregoing papers it is ordered that the branch of defendant's motion for an order pursuant to CPLR 3211(a)(8) dismissing plaintiff's causes of action and the instant proceedings on the grounds that this Court does not have personal jurisdiction over the defendant for failure of the plaintiff to properly serve the defendant is denied.

Defendant maintains that plaintiff is in violation of Domestic Relations Law § 232, which section states that the Summons with Notice or Summons and Complaint in a divorce action must be personally served upon the defendant, unless a court order is obtained to permit substituted service. Defendant maintains that plaintiff never even attempted to personally serve the defendant.

Plaintiff submits an affidavit of the process server which affidavit demonstrates prima facie compliance with CPLR 308. Pursuant to the Order of Hon. Pam Jackman Brown dated May 2, 2011, this action is not a matrimonial action, and as defendant fails to dispute that he was served in accordance with the provisions of CPLR 308, this branch of the motion is denied. It

is ORDERED that defendant shall serve an Answer to the Complaint within thirty (30) days of the date of service of a copy of this order with notice of entry.

That branch of defendant's motion for an order dismissing the Summons and Complaint on the basis of improper venue pursuant to CPLR 509 is denied. Plaintiff designated Queens County as the place of trial. Defendant maintains that the parties have no connection to Queens County.

Pursuant to CPLR 509, "the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of Rule 511".

Pursuant to CPLR 511:

(a) Time for motion or demand. A demand under subdivision (b) for change of place of trial on the ground that the county designated for that purpose is not a proper county shall be served with the answer or before the answer is served. A motion for change of place of trial on any other grounds shall be made within a reasonable time after commencement of the action.

(b) Demand for change of place of trial upon ground of improper venue, where motion made. The defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant. . .

Plaintiff maintains that the defendant failed to serve any written demand upon the plaintiff or her attorney for change of the place of trial upon the ground of improper venue. Defendant maintains that it made a written demand on March 28, 2011 by letter to Westchester Supreme Court Justice Robert Berliner with a copy to opposing counsel. The Court finds that the letter dated March 28, 2011 appears to be seeking an advisory opinion from the Court attorney instead of a clear demand for a change of venue. As such, defendant has failed to comply with the requirements of CPLR 511(b) and this branch of the motion is denied.

That branch of defendant's motion seeking, that if the Court determines that jurisdiction has been obtained over defendant,

then removing and transferring this action to the Westchester Supreme Court consolidating the Westchester Supreme Court action with the above-entitled action pursuant to CPLR 602(b) is hereby granted solely to the extent that Action No. 2 (Index No. 4958/2011), currently venued in Supreme Court, Queens County shall be consolidated with Action No. 1 (Index No. 17778/10), currently venued in Westchester County solely for the purposes of joint trial. Defendant in Action No. 2, Tarunjit Singh has demonstrated that the matters involve common questions of law and fact, in that they involve common parties and arise out of the same marital relationship. Separate Index Numbers, Requests for Judicial Intervention (RJI) and Notes of Issue shall be filed for each action.

It is undisputed that there is a divorce proceeding in Westchester Supreme Court under Index No. 17778/10 which action was commenced by defendant in the instant proceeding, Tarunjit Singh, wherein plaintiff in the instant action, Harleen Kaur Sethi counterclaimed for, inter alia, equitable distribution, maintenance, and legal fees. Defendant in the instant proceeding, Tarunjit Singh brought a motion in Westchester Supreme Court seeking to amend his complaint to add the grounds of cruel and inhuman treatment. Pursuant to a "So-Ordered" Stipulation of Hon. Robert M. Berliner of Westchester Supreme Court dated April 26, 2011, the parties have agreed to proceed with the divorce based upon the grounds of Abandonment pursuant to Domestic Relations Law § 170(2), said grounds being brought by the defendant against the plaintiff. Still pending in the Westchester Supreme Court are issues of distribution of marital property, maintenance, and award of legal fees. The instant action by plaintiff Harleen Kaur Sethi seeks damages for, inter alia, deception and fraud.

"Where common questions of law or fact exist, a motion to consolidate or for a joint trial pursuant to CPLR 602(a) should be granted absent a showing of prejudice to a substantial right by the party opposing the motion" (*Mas-Edwards v. Ultimate Services, Inc.*, 845 NYS2d 414, 415 [2d Dept 2007][internal citations omitted]). In the instant case, plaintiff has demonstrated that the matters involve common questions of law and fact, in that they involve common partes and arise our of the same marital relationship. Therefore, the two actions shall be consolidated solely for the purpose of a joint trial.

The caption of the actions to be jointly tried shall read:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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TARUNJIT SINGH,  
Plaintiff,

Index No. 17778/10

-against-

HARLEEN KAUR SETHI,  
Defendant.

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HARLEEN KAUR SETHI,  
Plaintiff,

Index No. TBA

-against-

TARUNJIT SINGH,  
Defendant.

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The actions which are consolidated solely for joint trial shall be tried in Westchester County. "The general rule is that 'where consolidation of actions begun in different counties is had, the venue should be in the county whose jurisdiction was first invoked'" (*Maccabee v. Nangle*, 307 NYS2d 509, 510 [2d Dept 1970][internal citations omitted]). Where there are actions pending in two counties, the Court has the authority to order a consolidation of the two actions and to direct that the trial be held in one of the counties, "thus incidentally changing the venue of the actions pending in the other county, without necessarily requiring a showing of circumstances which would have independently justified the change of venue" (*Padilla v. Greyhound Lines, Inc.*, 288 NYS2d 641 [1st Dept 1968], citing *Smith v. Witteman Co.*, 10 AD2d 793). In this matter, the first action was commenced in Westchester County, and as such it is the proper venue for joint trial.

It is further ORDERED that a copy of this order with notice of entry shall be served, within thirty (30) days of entry of this order, on all parties to the actions to be jointly tried, on the Clerks of Queens County and Westchester County and at the

time of filing of the note of issue, upon the clerk of the Trial Term Office of the Supreme Court, Westchester County, and it is further

ORDERED that upon being served with a copy of this order, the Clerk of the Supreme Court, Queens County, is directed to transfer all papers filed under Index No. 4959/11 to the clerk of the Supreme Court, Westchester County to be transferred to the file under Index No. 17778/10.

That branch of defendant's motion for an award of legal fees in the amount of \$1,500.00 for having to oppose plaintiff's Summons and Complaint and for bringing this motion, with costs and expenses incurred, including but not limited to the \$95.00 fee for purchasing a Request for Judicial Intervention and the \$45.00 fee for filing this motion is denied.

Plaintiff's cross motion seeking attorney's fees in the amount of \$2,500.00 for opposing the defendant's motion seeking dismissal of the complaint and change of venue with cost of the motion in sum of \$45.00 is denied.

This constitutes the decision and order of the Court.

Dated: July 18, 2011

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**Howard G. Lane, J.S.C.**