**PROCEDURE FOR THE TRANSFER OF CASES**

Due to some difficulty a suit may be required to be transferred to some other court. In order to address these issues, the Civil procedure, 1908 (CPC) has given power to the courts to deal with such issues and transfer the legal proceedings to another court of competent jurisdiction if the ends of justice demand so.

**Procedure for transfer**

* In certain situations, it might happen that the legal proceedings or a suit may be bonafide required to be transferred from one court to another court. This has been dealt with in section 24 of the CPC. The power has been vested in the court i.e., high court and the district court under sec 24 of the CPC to transfer or withdraw a case and the supreme court has been vested with the power under section 25 of the CPC.

It is a discretionary power that has been provided to the court to transfer a case. Therefore the court may or may not allow such a transfer.

* The process is as follows:

1. A party may also make an application to the court under this section for transferring a certain case. Generally when a party makes an application for such a transfer the party has to show the bonafide requirement of such a transfer.
2. A notice is issued to the other party before taking a decision and both the parties heard by the court. When the High Court or the district court makes an order suo motu to transfer the case, then in such a case no notice is given to the parties, however when an application is preferred for such a transfer, then the notice is issued to the other party for being heard.
3. The transfer of a legal proceeding or withdrawal can be allowed at any stage even after the hearing of the matter has started or in the course of execution proceedings
4. The other party has to file a detailed counter stating reasons why the suit should not be transferred. This will serve as the base for the arguments for the other side.
5. Once both parties have submitted their pleadings, the judge will hear the arguments of both the parties and pass orders on merit.
6. It needs to be borne in mind that an application for a transfer is a separate proceeding and the orders to follow from the transfer application cannot be characterised as an order passed in the pending legal proceedings for whose transfer the application of transfer has been moved.

In the case of Kulwinder Kaur v. Kandi Friends Education Trust[[1]](#footnote-0), it was held that the discretionary power under sec 24 and 25 cannot be put in straight jacket formula but the same needs to be approached with caution and due care.

It was further held that some instances that can be the grounds for transfer are the interest of justice; reasonable apprehension in the mind of the litigant that he might not get justice in the court trying the case; inconvenience with regard to the evidence, etc.

In the case of Maneka Gandhi v. Rani Jethmalani[[2]](#footnote-1), it was held that fair trial is the integral part of the justice delivery system and if there are compelling reasons which show that one of the party will not get a fair trial, then it becomes necessary to use the power for

transferring the case.

In the case of Vivekananda Nidhi v. Asheema Goswami[[3]](#footnote-2), it was held that where a party to suit was not provided with a notice that the opposite party filed for the transfer of the suit, then such an order which allowed the transfer was required to be set aside since it contravened sec 24.

1. 2008 (3) SCC 659 [↑](#footnote-ref-0)
2. (1979) 2 SCR 378 [↑](#footnote-ref-1)
3. 2000 (10) SCC 23 [↑](#footnote-ref-2)