

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
TR.CMP Nos.14, 15, 16, 17 & 18 of 2015

COMMON ORDER:

1 Tr.CMP No.14 of 2015 is filed seeking to withdraw O.S.No.293 of 2012 pending on the file of the Court of the Senior Civil Judge, Ramachandrapuram and transfer the same to the Court of the I Additional Senior Civil Judge, Kakinada.

2 Tr.CMP No.15 of 2015 is filed seeking to withdraw O.S.No.294 of 2012 pending on the file of the Court of the Senior Civil Judge, Ramachandrapuram and transfer the same to the Court of the I Additional Senior Civil Judge, Kakinada.

3 Tr.CMP No.16 of 2015 is filed seeking to withdraw O.S.No.95 of 2013 pending on the file of the Court of the Principal Senior Civil Judge, Yellamanchili and transfer the same to the Court of the I Additional Senior Civil Judge, Kakinada.

4 Tr.CMP No.17 of 2015 is filed seeking to withdraw O.S.No.96 of 2013 pending on the file of the Court of the Principal Senior Civil Judge, Yellamanchili and transfer the same to the Court of the I Additional Senior Civil Judge, Kakinada.

5 Tr.CMP No.18 of 2015 is filed seeking to withdraw O.S.No.165 of 2013 pending on the file of the Court of the Senior Civil Judge, Vizianagaram and transfer the same to

the Court of the I Additional Senior Civil Judge, Kakinada.

6 Since the point involved in all the petitions is one and the same, all these petitions are being disposed of by this common order.

7 Heard the learned counsel for the petitioner and the respondents.

8 The contention of the learned counsel for the petitioner is three fold viz., **1)** The entire litigation is the brain child of one Gosala Krishna, who is none other than the own brother of the petitioner and that the respondents herein are name lenders, who have no personal interest in the subject matter of the suits, **2)** The own brother of the petitioner by name Gosala Krishna also filed O.S.No.91 of 2013 on the file of the Court of the III Additional District Judge, Kakinada for specific performance, and **3)** The defence taken by the petitioner in all the suits is one and the same, therefore, it is just and necessary to conduct trial by one Court in order to avoid multiplicity of litigation.

9 *Per contra*, the learned counsel for the respondents submitted that the cause of action for each suit is different, therefore, the petitions are liable to be dismissed. They further submitted that the present petitions are filed with an ulterior motive to drag on the proceedings.

10 Now the point that arises for determination in all these petitions is:

“Whether the petitioner has made out sufficient ground to allow the petitions?”

11 A perusal of the record reveals that the respondents herein have filed the above suits at Yellamanchili, Ramachandrapuram, Kakinada and Vizianagaram *inter alia* contending that the petitioner executed promissory notes in their favour. Even as per the case of the respondents, the petitioner executed the promissory notes on 13.05.2010 at Yellamanchili, Ramachandrapuram and Kakinada, which is the root cause for filing of O.S.Nos.362 of 2012, 294 of 2012, 293 of 2012, 95 of 2013 and 96 of 2013. As per the case of the respondents, the petitioner executed the promissory notes in their favour on 13.05.2010 at different places as mentioned above. The suit O.S.No.165 of 2013 is filed against the petitioner on the ground that he executed promissory note in favour of the defendant therein on 18.05.2010. Whether the petitioner executed promissory notes at different places on the same day i.e. on 13.05.2010 is a relevant point to be considered in the above suits.

12 The learned counsel for the defendant in O.S.No.362 of 2012 submitted that the plaintiff's side evidence was closed and the matter is coming up for defendant's side evidence. However, the learned counsel for the petitioner submitted that the petitioner herein filed CRP No.984 of 2015 on the file of this Court and obtained interim stay of all further proceedings in O.S.No.362 of 2012, vide order dated 17.03.2015. All the suits are filed basing on the promissory notes purported to have been executed by the petitioner in favour of the respondents on 13.05.2010 at different places in

Visakhapatnam and East Godavari Districts.

13 The predominant contention of the learned counsel for the petitioner is that the respondents are only name lenders and the real person behind the litigation is one Gosala Krishna, who is none other than the own brother of the petitioner. A perusal of the record reveals that the petitioner's own brother filed O.S.No.91 of 2013 against the petitioner for specific performance on the file of the III Additional District Court, Kakinada. The defence taken by the petitioner is one and the same in all the suits. The witnesses likely to be examined by the parties are also common in all the suits. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner to prosecute the matters by producing common witnesses in all the suits at different places. At this juncture, the learned counsel for the petitioner has drawn my attention to the ratio laid down in

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wherein this Court held as under:

4. Normally the plaintiff has the right to choose the place of suing and the mere convenience of the defendant or his witnesses cannot be a valid ground for the transfer of the suit, but where the defence in all the suits is practically one and the same and common questions of fact and law arise for decision, to secure the ends of justice and to prevent multiplicity of proceedings and also the possibility of conflicting judgments, Courts have generally held that it is better to have all such suits tried at one place only by the same Court. Ultimately the question depends on the interests of justice and not the convenience of one party or the other. The learned single Judge of the Kerala High Court has followed the view taken by the Madras High Court in the decision reported in Rajulu v. Govindan Nair (AIR 1938 Mad. 745) and the Bombay High Court in the decision reported in Vaman Vasudeo v. Raghunath Ganesh (AIR 1949 Bom. 263).

5. Having regard to the fact that six similar suits are already pending in the Court of the II Additional Senior Civil Judge, Vijayawada, I am of the view that it is a fit case for ordering the transfer of OS Nos. 17, 18 and 19 of 1995 which are pending on the file of the Court of the Principal Senior

Civil Judge, Tenali, also to the former Court as such a course besides being convenient for the parties and their witnesses will also be conducive for avoiding multiplicity of proceedings and conflicting judgments. In this view of the matter, the Transfer CMPs. are ordered as prayed for. As the suits are of the year 1995 and they are also ripe for trial, the learned II Additional Senior Civil Judge, Vijayawada, is directed to dispose of all the suits as expeditiously as possible preferably within six months from the date of receipt of this order. There will be no order as to costs.

14 No doubt, convenience of one of the parties to the proceedings is not a valid ground for transfer of cases. However, the defence taken by the petitioner in all the matters, as observed above, is one and the same. Even if the petitions are allowed, the same may not affect the rights of the respondents. Therefore, in order to avoid conflicting of judgments as well as to avoid multiplicity of litigation, this Court is of the considered view that it is just and necessary to transfer all the matters to one Court. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the petitioner has made out grounds, more so valid grounds, for transfer of the suits.

15 In the result, all the petitions are allowed, O.S.No.293 of 2012 and O.S.No.294 of 2012 both pending on the file of the Court of the Senior Civil Judge, Ramachandrapuram, O.S.No.95 of 2013 and O.S.No.96 of 2013 both pending on the file of the Court of the Principal Senior Civil Judge, Yellamanchili and O.S.No.165 of 2013 pending on the file of the Court of the Senior Civil Judge, Vizianagaram are withdrawn from the file of the respective courts and are

transferred to the Court of the I Additional Senior Civil Judge, Kakinada for trial and disposal in accordance with law. As a sequel, miscellaneous petitions pending in all these Tr.CMPs, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 26th October, 2015.

Kvsn

[\[1\]](#) 1999 (6) ALT 398