

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
TR.CMP No.130 of 2015

ORDER:

1 This petition is filed under Section 24 C.P.C by the petitioner seeking to withdraw O.S.No.61 of 2011 from the file of the Additional District Judge, Kothagudem and transfer the same to any competent Court at Hyderabad.

2 Heard both sides and perused the material available on record.

3 The facts leading to filing of the present petition are, briefly, as follows:

4 The respondent herein filed O.S.No.61 of 2011 on the file of the District Court, Khammam for recovery of Rs.5,43,14,446/- from the petitioner. The petitioner filed written statement opposing the claim of the respondent.

5 The learned counsel for the petitioner submitted that the corporate office of the respondent is situated at Hyderabad and hence it is convenient for both parties if the matter is transferred to Hyderabad. He further submitted that at present the suit is pending on the file of the Additional District Court, Kothagudem.

6 *Per contra*, the learned counsel for the respondent submitted that the present petition is not maintainable under law.

7 A perusal of the record clearly reveals that the head office of the petitioner is situated at Vijayawada. It is not out of place to extract the relevant portion of the cause of action and territorial jurisdiction paragraphs as mentioned in the plaint, which reads as under:

“The facts constituting the cause of action are stated above and the same arose on 25.03.2006 when the letter of intent was issued, on 05.04.2006 when order No.MOC-4 was released to the defendant for a quantity of 223-20 LBCM (later reduced to 202.310 LBCM) on 04.11.2006 when the defendant commenced the work and the allotted work must be completed within 36 months i.e. 03.11.2009, but taking into consideration of 12 days *Force Majeure* period excluding play days, the prescribed period for completion of work is extended up to 17.11.2009, and the defendant had failed to achieve the monthly scheduled targets and on all the dates when the plaintiff addressed letters to the defendant to take necessary steps to improve the performance by 100% by deploying sufficient machinery etc., and the monthly penalty for delay in work / LD (late delivery) penalty for not executing quantities as per prescribed completion schedules mentioned in Condition No.10.1 were imposed and in spite of the same, the defendant had failed to complete the total awarded quantity even by 17.11.2009 i.e. within the scheduled period, and that as the SCCI is not interested to carry out the work beyond scheduled period through the defendant, the contract gets terminated automatically and on 15.11.2009 when the letter of deemed termination was issued, and that as per the final survey report dt:06.02.2010 the total quantity of work executed by defendant up to 17.11.2009 is 111.057 LBCM as against the total awarded quantity of 202.310 LBCM leaving a balance of 91.253 LBCM and on 24/28.03.2011 when the plaintiff sent a letter demanding the defendant for payment of the due amount and on 05.04.2011, the defendant sent reply requesting 20 days time, finally on 17/20.06.2011, the plaintiff in continuation and in modification of claim made in the earlier letter, sent a letter demanding payment of the due amount and in spite of the same the defendant has failed to pay the due amount and the same still continues. The cause of action for filing the suit arose at Kothagudem and Manuguru in Khammam district within the jurisdiction of this Hon'ble Court.”

8 A perusal of the above paragraph clearly demonstrates that the cause of action for filing of the suit arose within the territorial jurisdiction of the Additional District Court, Kothagudem. It is not the case of the petitioner that the Additional District Court, Kothagudem has no pecuniary or territorial jurisdiction to entertain the suit. The registered office of the respondent is situated at Kothagudem. No doubt, the corporate office of the respondent is situated at Hyderabad. Even as per the averments made in the plaint and the written statement, the head office of the petitioner is situated at Vijayawada. The petitioner executed the work contract with the respondent at Kothagudem, within the territorial

jurisdiction of the Additional District Court, Kothagudem. Admittedly, no part of the cause of action arose within the limits of the Courts at Hyderabad. A perusal of the record clearly indicates that the trial was commenced in the suit. The head office of the petitioner is not situated at Hyderabad. Merely because the corporate office of the respondent is situated at Hyderabad, that itself is not a valid ground for transfer of the suit from the Additional District Court, Kothagudem to Hyderabad. If the suit is transferred at this stage, it may cause inconvenience to the respondent and it may hamper the progress of the trial in the suit. At this juncture, this court is placing reliance on the ratio laid down in ***Kulwinder Kaur Alias Kulwinder Gurcharan Singh V. Kandi Friends Education Trust and Others***^[1] wherein the Hon'ble apex Court held at para No.23 as follows:

“Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.

9 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 there are no grounds much less valid grounds to transfer the suit from the Additional District Court,

Kothagudem to Hyderabad.

10 Accordingly, this Tr.CMP is dismissed. As a sequel, miscellaneous petitions, if any, pending in this Tr.CMP, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 21st August, 2015.

Kvsn

[\[1\]](#) (2008) 3 SCC 659