

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.C.M.P.No.733 of 2014

ORDER:

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This petition is filed for withdrawal and transfer of O.P.No.1469 of 2014, filed by the respondent/husband for restitution of conjugal rights pending on the file of Family Judge's Court, Ranga Reddy District at L.B.Nagar to the Judge, Family Court, Vijayawada to be tried along with O.P.G.L.No.4310 of 2014 and M.C.C.F.No.3115 of 2014 filed by the petitioner/wife.

2. The case of the petitioner is that she is the legally wedded wife of the respondent and their marriage was solemnized on 26-10-2012 as per Hindu rites and customs. After the marriage, the petitioner and the respondent lived together at Moti Nagar, Hyderabad. Out of their wedlock, they were blessed with a female child. After giving birth to child, the respondent created a story stating that the petitioner and her child are to be under Doctor's supervision for two months and it would cost about Rs.8.00 lakhs and started harassing her to bring said amount from her parents. On that the petitioner filed a complaint before Station House Officer, Machavaram, Vijayawada. Thereafter, the respondent filed OP.No.1469 of 2014 on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar for restitution of conjugal rights. The petitioner also filed maintenance case

vide MCCF.No.3115 of 2014 and O.P.G.L.No.4310 of 2014 before the Judge, Family Court at Vijayawada and both the cases are pending. That it is difficult for the petitioner to prosecute the proceedings in the Court at Ranga Reddy initiated by her husband as her parents are permanent residents of Vijayawada and she has nine months old daughter and it is difficult for her to travel from Vijayawada to Ranga Reddy District. Whereas, the respondent is attending in both cases filed by her at Vijayawada, as such, the present Tr.CMP is filed seeking to transfer OP No.1469 of 2014 to the competent Court at Vijayawada.

3. Counter is filed by the respondent stating that the transfer application is not maintainable either in the eye of law or on facts and this Court is not vested with jurisdiction to transfer the case pending in the State of Telangana to the State of Andhra Pradesh. The jurisdiction to transfer cases from one High Court or Civil Court in one State to a High Court or Civil Court of any other State is vested with Hon'ble Supreme Court as per Section 25 (1) of C.P.C. It is also stated that though the petitioner is earning, she filed

MCCF.No.3115 of 2014 seeking maintenance for herself and her child. That the respondent filed OP.No.1469 of 2014 for restitution of Conjugal Rights and in the said OP, though the petitioner received notices, she is trying to procrastinate the proceedings

and as a counter blast filed the present transfer CMP. Hence, sought for dismissal of the Tr.CMP.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. When jurisdiction of this Court to transfer the case pending on the file of Family Court at Ranga Reddy District to the competent Court at Vijayawada is raised, pursuant to bifurcation of State of Andhra Pradesh and formation of a new State of Telangana, this Court wanted to hear learned Advocate Generals of both the States of Telangana and Andhra Pradesh.

6. Learned Advocate General for the State of Andhra Pradesh submitted that as per Section 24 of CPC, in exercise of general power of transfer and withdrawal, the High Court has jurisdiction to transfer a case pending before a Court subordinate to it to another Court subordinate to it. Learned Advocate General also referred to 30 of Andhra Pradesh Reorganization Act, 2014

(for short “the Reorganization Act”) and submitted that since both the Courts *i.e.* the transferor and the transferee Courts are subordinate to this High Court, this Court is empowered to transfer OP pending on the file of Family Court, Ranga Reddy District to Family Court, Vijayawada. Reference is also made Section 31 of the Reorganization Act, and submitted that till a separate High Court is formed for the State of Andhra Pradesh, this Court

exercises jurisdiction over both the States of Telangana and Andhra Pradesh. In support of his contentions, reliance is placed on the judgment of the Supreme Court in **Durgesh Sharma v. Jayshree**^[1].

7. Learned Advocate General for the State of Telangana also referred to Section 24 CPC and submitted that High Court in exercise of the power vested thereunder can withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and transfer the same, for trial or disposal, to any Court subordinate to it and competent to try or dispose of the same. Learned Advocate General also referred to Section 3 of the Code which states that District Court is subordinate to High Court, and every civil Court of a grade inferior to that of a District Court is subordinate to High Court and District Court. Learned Advocate General also referred to Article 227 of Constitution of India, and submitted that every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and in the light of Section 30 of the Reorganization Act, this Court has jurisdiction to entertain the present Tr.CMP.

8. Learned counsel for the petitioner adopted the submissions made by learned Advocate Generals of both the States. He also submits that Section 25 of the Code does not curtail the power of

this Court vested under Section 24 Code and Section 24 CPC is to be read in conjunction with Sections 30 and 31 of the Reorganization Act.

9. Learned counsel for the petitioner, on facts of the case, contended that the petitioner is a woman suffering from ill-health and residing at Vijayawada having small child is unable to travel all the way from Vijayawada to Ranga Reddy District to attend the Court proceedings, hence she is justified in seeking the relief of transfer of proceedings filed by her husband to her place of residence at Vijayawada.

10. On the other hand, learned counsel for the respondent relies on the judgment of the Apex Court in *Durgesh Sharma's* case (1 supra) to contend that this Court has no power, authority or jurisdiction to transfer a case, appeal or other proceeding pending in a Court subordinate to it to any Court subordinate to another High Court in purported exercise of power under Section 24 of the Code and it is only the Supreme Court which can exercise the said power under Section 25 of the Code. In effect, his contention is that this Court in exercise of jurisdiction under Section 24 of the Code cannot transfer a case pending on the file of the Court situate in the State of Telangana to the file of the Court situate in the State of Andhra Pradesh. Learned counsel for the respondent, on facts of the case, contended that the allegations made by the

petitioner are false and made only as a counter blast to the OP filed by him. It is also contended that vagaries of life, personal inconvenience cannot be a ground to transfer the case filed by the petitioner, the petitioner being *dominant litus* he has a right to seek remedy from the Court of his choice, which is situate in the place he resides and normally he cannot be compelled to face the proceedings other than the in forum chosen by him.

11. In every civil dispute, the petitioner/plaintiff has the right to decide the forum where he/she wishes to institute the suit provided it has the jurisdiction to try the suit. However, in such cases where more than one forum is available and even otherwise, this right of the plaintiff is limited by the power of superior Courts to transfer or withdraw the case from a subordinate Court to another Court.

12. Sections 22, 23, 24 and 25 of the Code CPC with transfer of suits. Relevant for the purpose of this case is Section 24 of the Code, which is as under:-

“Section 24: General power of transfer and withdrawal--- (1)

On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending

before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

i) try or dispose of the same; or

ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of the such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,---

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

13. A reading of the above provision of law, it is clear that Section 24 of the Code gives power to two Superior Courts, viz., the High Court or the District Court to withdraw any suit, appeal or other proceedings pending in any Court subordinate to it and either try and dispose of the same, or transfer the same for trial or

disposal to any Court, subordinate to it and competent to try or dispose of the same as ordained Section 24 (2) of the Code.

14. It is known fact that from appointed date as defined under Section 2 (a) of the Reorganization Act, a separate State (Telangana) is carved out from the erstwhile united State of Andhra Pradesh.

15. Now the question is whether this Court exercises superintendence over all Courts situate in the State of Telangana and in the State of Andhra Pradesh.

16. It is worthwhile to refer to Section 30 of the AP Re-organization Act, which reads thus:-

Section 30 of A.P. Re-organization Act:

High Court of Judicature at Hyderabad to be common High Court till establishment of High Court of Andhra Pradesh:-

1) On and from the appointed day-

a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under article 214 of the Constitution read with Section 31 of the Act.

b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

2) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the State of Andhra Pradesh and Telangana on the basis of population ratio.

17. A reading of the above provisions of law, under Clause (a), sub-Section (1) of Section 30 of the Act clearly postulates that the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of the Act. As a necessary corollary this Court exercises jurisdiction throughout the territories of not only the State of Telangana where the High Court is situate, but also throughout the territories of the State of Andhra Pradesh. The power of superintendence conferred under Article 227 of the Constitution over all the Courts by the High Court is deemed to extend to the territory of the State of Andhra Pradesh, in view of the Section 30 of the Act, and in such view of the matter, this transfer civil miscellaneous petition is maintainable.

18. In ***DURGESH SHARMA's case (supra 1)***, which is relied on by learned Advocate Generals of both States, the issue that was considered by the Supreme Court was whether the a High Court has jurisdiction to transfer suits and other proceedings from one Court subordinate to it to another Court subordinate to another High Court. Paras 47, 50, 51 & 57 reads thus:-

47. In our considered opinion, where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it. Likewise, where such courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring a case from one court subordinate to it to any other court subordinate to that High Court. But where such courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order to transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer.

50. The matter can be examined from another angle also. Every court has its own local or territorial limits beyond which it cannot exercise the jurisdiction. So far as this Court is concerned, its jurisdiction is not circumscribed by any territorial limitation and it extends over any person or authority within the territory of India. But, it has no jurisdiction outside the country. So far as a High Court is concerned, its jurisdiction is limited to territory within which it exercises jurisdiction and not beyond it. On that analogy also, a High Court cannot pass an order transferring a case pending in a court subordinate to it to a court subordinate to another High Court. It would be inconsistent with the limitation as to territorial jurisdiction of the Court.

51. This can be compared with exercise of extraordinary jurisdiction by a writ court under Article 32 or 226 of the Constitution. It is well settled that this Court can exercise power by issuing writs, directions or orders to every authority within the territory of India (as also those functioning outside the country provided such authorities are under the control of the Government of

India). But the jurisdiction of a High Court has territorial limitations. It can exercise the power 'throughout the territories in relation to which it exercises the jurisdiction', that is to say, its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be within those territories which clearly implies that they must be amenable to its jurisdiction in accordance with law.

57. For all these reasons, in our opinion, the order passed by the High Court is not sustainable and deserves to be set aside. We hold that a High Court has no power, authority or jurisdiction to transfer a case, appeal or other proceeding pending in a court subordinate to it to any court subordinate to another High Court in purported exercise of power under sub-section (3) of Section 23 of the Code and it is only this Court which can exercise the said authority under Section 25 of the Code. The order passed by the High Court, therefore, deserves to be set aside and is accordingly set aside.

19. In the judgment cited *supra* question before the Supreme Court was with regard to the jurisdiction to transfer suits and other proceedings by a High Court from one court subordinate to it to another court subordinate to another High Court and while answering the issue it was held that High Court has no power to transfer suits and other proceedings from one court subordinate to it to another court subordinate to another High Court. The judgment relied on by the learned counsel for the respondent is not applicable to the facts of the present case. In the instant case, both the Courts are subordinate to this Court, this Court being the High Court of judicature for both States of Telangana and the State

of Andhra Pradesh. In the light of Section 30 of the Act on and from the appointed day, this Court has territorial jurisdiction to deal with the matters of State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of the Act.

20. As submitted by learned Advocate Generals of both the States, Section 24 (1) (b) (2) of CPC empowers this Court to withdraw any suit, appeal or other proceeding pending in any court subordinate to it and transfer the same as per Section 24(1) (b) (ii) of C.P.C. for trial or disposal to any court subordinate to it and competent to try or dispose of the same. Admittedly, both the Courts are subordinate to this High Court. As such, it cannot be contended that this Court has no power to transfer this CMP.

21. Coming to the merits of the case, the petitioner has small child and she has filed MCCF.No.3115 of 2014 and OPGL.No.4310 of 2014 before the Family Court, Vijayawada, Krishna District and she states that she is dependant on her parents and it is difficult for her to travel all the way from Vijayawada to Ranga Reddy District. The respondent has to attend the cases, which were filed by the petitioner at Vijayawada. The Supreme Court in **Sumita Singh v. Kumar Sanjay**^[2] held that while considering transfer petitions in matrimonial proceedings, convenience of a

wife is to be looked into.

22. In view of above facts and circumstances, I feel that it is just and proper to withdraw O.P.No.1469 of 2014 from the file of Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to the Family Court, Vijayawada, since M.C.C.F.No.3115 of 2014 and O.P.G.L.No.4310 of 2014 are already pending on the file of Family Court at Vijayawada.

23. The counsel for the respondent submitted that the presence of respondent may be dispensed in the O.P., as it is difficult for him to attend on each and every date of hearing because of distance. In view of the same, the presence of respondent is dispensed with in the O.P.G.L. and M.C. on each and every date of adjournment except on the dates of cross-examination or on any other date as specifically required by the Court.

24. Accordingly, the Transfer CMP is allowed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

Dated: 18-11-2015

Note: LR copy is marked.

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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% Dated 18-11-2015

Between:

Chalasani Deepthi

..Petitioner

And:

\$ Chalasani Krishna Chaitanya

..Respondent

! Counsel for the petitioner

: Sri G.Vivekanand

^ Counsel for respondent
Lakshminarayana

: Sri T.

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? Cases referred:

1) (2008) 9 SCC 648

2) AIR 2002 SC 396

[\[1\]](#) (2008) 9 Supreme Court Cases 648

[\[2\]](#) AIR 2002 SC 396