

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

**Civil Revision Petition No.692 of 2015, 3823 of 2015,
3826 of 2015 and 3831 of 2015**

COMMON ORDER:

C.R.P.no.692 of 2015 under Article 227 of the Constitution of India by the 11th defendant in O.S.No.143 of 2001 is directed against the orders dated 06.02.2015 of the learned Principal Senior Civil Judge, Machilipatnam passed in I.A.no.123 of 2015 filed under Section 151 of the Code requesting to club O.S.no.143 of 2001 with the other two suits O.S.no.227 of 2009 and O.S.no.243 of 2010 on the file of the same Court for conducting common trial and disposing of all the said suits by a common judgment on the grounds that common questions of fact and law are involved in all the three suits and that the clubbing of the suits would avoid repetitive adduction of the same oral and documentary evidence in the three suits.

C.R.P.no.3823 of 2015 under Article 227 of the Constitution of India by the defendants 2 and 3 in O.S.No.243 of 2010 is directed against the orders dated 10.04.2015 of the learned District Judge, Krishna at Machilipatnam passed in Transfer O.P.No.275 of 2013 filed under Section 24 of the Code praying to withdraw the suit O.S.no.243 of 2010 on the file of the learned Senior Civil Judge, Machilipatnam and transfer it to the District Court to be tried along with O.S.no.25 of 2006 pending on the file of the District Court.

C.R.P.no.3826 of 2015 under Article 227 of the Constitution of India by the plaintiffs in O.S.No.227 of 2009 is directed against the orders dated 10.04.2015 of the learned District Judge, Krishna at Machilipatnam passed in Transfer O.P.No.274 of 2013 filed under Section 24 of the Code praying to withdraw the suit O.S.no.227 of 2009 on the file of the learned Senior Civil Judge, Machilipatnam and transfer it to the District Court to be tried along with O.S.no.25 of 2006 pending on the file of the District Court.

C.R.P.no.3831 of 2015 under Article 227 of the Constitution of India by the defendants 10 and 11 in O.S.No.143 of 2001 is directed against the orders dated 10.04.2015 of the learned District Judge, Krishna at

Machilipatnam passed in Transfer O.P.No.273 of 2013 filed under Section 24 of the Code praying to withdraw the suit O.S.no.143 of 2001 on the file of the learned Senior Civil Judge, Machilipatnam and transfer it to the District Court to be tried along with O.S.no.25 of 2006 pending on the file of the District Court.

2. I have heard the submissions of the learned counsel appearing for the revision petitioners in all the revisions and the learned counsel appearing for the contesting respondents. The parties herein shall be referred to as 'petitioners' and 'respondents 1 and 2' as arrayed in C.R.P.no.692 of 2015 for convenience and clarity.

3. The facts, which are to be stated as a prelude to these orders, in brief, are as follows:

'There are four suits involved in these revisions. Three suits, viz., (i) O.S.no.143 of 2001, (ii) O.S.no.227 of 2009 and (iii) O.S.no.243 of 2010 are on the file of the Court of the learned Senior Civil Judge, Machilipatnam. The 4th suit viz., O.S.no.25 of 2006 is on the file of the learned District Judge, Krishna at Machilipatnam. The revision petitioner in C.R.P.no.692 of 2015 is the 11th defendant in the first suit, the plaintiff in the second suit, a defendant in the third suit and the 6th defendant in the fourth suit referred to supra. The respondents 1 and 2 in CRP no.692 of 2015 are the plaintiffs in the first suit, the defendants 1 and 2 in the second suit and the plaintiffs in the third suit. The 1st respondent amongst them is the second plaintiff in the fourth suit. The revision petitioners herein want all the four suits to be clubbed/consolidated. Therefore, they had filed three Transfer OPs aforementioned on the file of the District Court for transfer of the first three suits pending on the file of the Court of the learned Senior Civil Judge, Machilipatnam to the file of the District Court for being tried along with the fourth suit on the file of the District Court after consolidation of all the four suits. The revision petitioners also filed an interlocutory application under Section 151 of the Code for clubbing of O.S.no.143 of 2001 with the other two suits O.S.no.227 of 2009 and O.S.no.243 of 2010 on the file of the Court of

the learned Senior Civil Judge, Machilipatnam. The learned Senior Civil Judge, Machilipatnam while dismissing the said interlocutory application had taken note of a fact that the High Court had already directed for clubbing of O.S.no.227 of 2009 and 243 of 2010 though no copy of such order of the High Court is produced before the said Court. However, the learned Senior Civil Judge dismissed the interlocutory application of the revision petitioners and had refused to club all the three suits and for conducting joint trial. The learned District Judge dismissed all the three Transfer OPs and had accordingly rejected the request for transfer of the first three suits on the file of the Court of the learned Senior Civil Judge, Machilipatnam to the District Court for being tried along with the fourth suit pending on the file of the District Court. Therefore, the aggrieved revision petitioners had filed all these four revision petitions.

4. The learned counsel for the revision petitioners would submit as follows:

The parties in the three suits on the file of the learned Senior Civil Judge are the same. The trial Court had failed to appreciate that the issues involved are interlinked and that the witnesses to be examined are common and that therefore, it is appropriate to have joint trial after clubbing the suits. No cogent reasons are given for not acceding to the request for clubbing all the first three suits on the file of the learned Senior Civil Judge, Machilipatnam. The fourth suit on the file of the District Court also involves issues, which are interlinked with the issues in the first three suits. The learned District Judge while dismissing the three transfer OPs had failed to appreciate the common nature of the facts and the pleadings of the contesting parties and had failed to take note of the fact that the issues involved in all the four suits are interlinked and that the witnesses to be examined are also common. The learned District Judge ought to have seen that separate trials of the first three suits by one Subordinate Court and the fourth suit by the District Court may lead to conflicting findings on identical issues and that, therefore, it is in the interests of justice to club all the four suits by withdrawing the first three suits from the Senior Civil Judge's Court to the District Court.

5. On the other hand, the learned counsel for the contesting respondents while drawing the attention of this Court to the complaints and the nature of the suits and the defences in the various suits raised by various parties and the issues that may arise for determination in the four suits, had urged that there are no grounds to club all the four suits, as rightly observed by the Courts below.

6. I shall advert to the relevant aspects while dealing with the merits of the matters.

7. As already noted, there are four suits, in all. The first three suits are on the file of the Court of the learned Senior Civil Judge, Machilipatnam.

7.1 The first suit O.S.No.143 of 2001 is filed by the respondents 1 and 2 in C.R.P.No.692 of 2015 for directing the 2nd defendant to render accounts of the 1st defendant firm-M/s.Ramakrishna Theatre therein in respect of a particular period or in the alternative for the dissolution of the first defendant firm and other reliefs.

7.2 The second suit O.S.No.227 of 2009 is filed by the revision petitioner in C.R.P.No.692 of 2015 and his brother against the aforementioned respondents 1 and 2 for specific performance of an agreement between them or alternatively for refund of Rs.4 lakhs with interest. The firm is not a party to this suit.

7.3 The third suit O.S.No.243 of 2010 is filed by the respondents 1 and 2 herein against the revision petitioners herein (D2 and D3) and two others for a declaration that the said amount of Rs.4 lakhs sent by draft dated 19.04.2007 is towards part of return of the advance amount, which was paid by the plaintiffs to the 1st defendant therein for a film or in the alternative, for a decree for return of the said amount with interest.

7.4 The fourth suit O.S.No.25 of 2006 is filed by the 1st respondent herein

and two others against the firm M/s. Brindavan Talkies (styled as dissolved firm) and others for a declaration that the said firm was dissolved with effect from 22.07.2004 and other reliefs.

8. I have gone through the pleadings in all the four suits and I have considered the contentions keeping in view the pleadings of the parties in the suits. The first suit is for dissolution of one partnership firm by name M/s.Ramakrishna Theatre and for rendition of accounts and other reliefs. The second suit is for specific performance of an agreement and an alternative relief. The third suit is for a declaration in regard to Rs.4 lakhs in relation to screening of a film. The fourth suit is for the dissolution of another firm, by name, Brindavan Talkies and for distribution of assets and other reliefs.

9. The causes of action in second and third suits, viz., O.S.no.227 of 2009 and O.S.No.243 of 2010 relate to a sum of Rs.4 lakhs to be accounted for. There are contentions and rival contentions, that is, conflicting versions in the said two suits in regard to the same said sum. One set of parties contend that it is paid for withdrawal of the suit O.S.no.143 of 2001. However, the version of the opposite party is that it is intended as an advance for screening of a film. Therefore, there is some nexus between two suits, viz., O.S.no.227 of 2009 and O.S.no.243 of 2010. Therefore, there are grounds for directing for consolidation of the said two suits and conducting joint trial. However, though O.S.no.143 of 2001 is a comprehensive suit, the parties in the said suit are not common and the firm M/s. Ramakrishna Theatre is a party to the said suit. The said firm is not a party to the other two suits. Therefore, there are no grounds to direct to club O.S.no.143 of 2001 with the other suits. Be that as it may, the fourth suit O.S.No.25 of 2006 on the file of the District Court, as already noted, is in regard to a declaration that the firm M/s. Brindavan Talkies is dissolved with effect from a particular date and for conversion of/distribution of the assets of the said firm. Thus, the suit O.S.no.143 of 2001 which is filed for rendition of accounts or alternatively for the dissolution of the firm and the other suit O.S.no.25 of 2006 for declaration that the firm therein, which is a different firm, stood dissolved with effect from

a particular date and for other reliefs are independent suits and therefore, have to be tried independently and separately. On careful examination of the pleadings in the four suits, this Court finds that the core issues to be determined in the first suit O.S.no.143 of 2001 concerning disputes in regard to one firm and the fourth suit O.S.No.25 of 2006 concerning disputes in regard to another firm are different and therefore, the issues in the said two suits need independent determination after conducting trials in the said two suits separately.

10. Having thus given earnest consideration, this Court is of the considered view that the four revisions can be disposed of with the following appropriate and necessary directions, which would meet the ends of justice.

11. In the result, the four revisions are disposed of with the following directions:

- (i) All the three suits, viz., (i) O.S.no.143 of 2001, (ii) O.S.no.227 of 2009 and (iii) O.S.no.243 of 2010 on the file of the Court of the learned Senior Civil Judge, Machilipatnam are hereby withdrawn and are transferred to the Court of the learned District Judge, Krishna at Machilipatnam where the 4th suit viz., O.S.no.25 of 2006 is pending;
- (ii) On such transfer from the learned Senior Civil Judge's Court to the District Court, the two suits, viz., O.S.no.227 of 2009 and O.S.no.243 of 2010 be consolidated, if not already consolidated, and joint trial shall be conducted in the said two suits by recording common evidence.
- (iii) However, the remaining two suits, viz., O.S.no.143 of 2001 and O.S.No.25 of 2006 shall be tried separately, but, simultaneously along with the above said two suits, which are now directed to be consolidated. After such simultaneous trial, the two consolidated suits and the other two suits, which are directed to be tried

independently and simultaneously, shall be disposed of in accordance with the procedure established by law, on one and the same day by rendering a common judgment in the two consolidated suits and two separate judgments in the other two suits O.S.no.143 of 2001 and O.S.No.25 of 2006;

- (iv) It is made clear that the evidence recorded in part in O.S.no.143 of 2001 shall hold good for that suit and the trial in the said suit shall be continued from the point at which the said suit is transferred or withdrawn.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revision petitions shall stand closed.

M. SEETHARAMA MURTI, J

11th April, 2016
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