

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

Tr. C.M.P. No.262 OF 2015

ORDER:

The Tr.C.M.P. is filed to withdraw O.S. No.183 of 2014 from the file of VII Additional District Judge (FTC), Krishna District at Vijayawada and transfer the same to the Court of District Judge, East Godavari District at Kakinada or to the Court of Chief Judge, City Civil Court at Hyderabad.

2) Heard both sides. Perused the material on record.

3) The petitioners herein are defendants 1 to 6 and respondent herein is the plaintiff in O.S. No.183 of 2014 (originally filed O.S. No.33 of 2014 before the II Additional District Judge, Krishna at Vijayawada since made over to the VII Additional District Judge (FTC), Krishna District at Vijayawada and renumbered as O.S. No.183 of 2014). The suit is filed for damages to a tune of Rs.10,05,000/- by setting up a case with false allegations and rumors spread out by the defendants to damage his reputation.

4) In the plaint the addresses of defendant Nos.1 and 2 are shown as they are residing at Samarlakota and defendant No.6 at Tuni, which are in East Godavari District. So far as defendant Nos.3 to 5 are concerned they are residing at Barkatpura, Hyderabad. In the plaint averments, so far as cause of action and territorial jurisdiction are concerned, it is pleaded that it is a false propaganda against the plaintiff and his family members that were taken place not only at Vijayawada, but also at Hyderabad and Tuni etc., of East Godavari District. It is therefrom in saying part of cause of action arisen at Vijayawada by invoking Section 20 (c)

C.P.C, the suit is maintained at Vijayawada. The plaintiff is representing through General Power of Attorney holder by name B.V.V.Surya Narayana. The name of the plaintiff is Budidi Namassivaya. Plaintiff is not residing anywhere in the country but at Las Vegas, Nevada, United States of America. The power of attorney holder's place admittedly no way confers jurisdiction of this Court, but for at best from the say of part of cause of action. Undisputedly, some of the defendants are residing at Vijayawada, even some of them are in another State within Hyderabad, leave about three of the defendants are residing at East Godavari District and so far as the expression placed reliance in opposing the transfer petition by the plaintiff as respondent herein of **Indian Overseas Bank, Madras vs Chemical Construction Company¹** concerned, the principle laid down is plaintiff being dominus litis and as such entitled to institute his suit in any form which the law allows him, the Court should not lightly change that forum and compel him to go elsewhere not in dispute, but for to consider how far the expression is applicable to the facts on hand detailed supra.

5) The police report is said to have been given by the 3rd defendant to the S.H.O, Machavaram Police Station of Vijayawada Corporation area and the very complaint shows the cause of action for the alleged report arisen at Samarlakota and not at Vijayawada. Even therefrom to rely for the alleged offence under Sections 354 and 506 IPC, leave about Section 66-A of the Information Technology Act, 2000 which is struck down

¹ AIR 1979 SC 1514

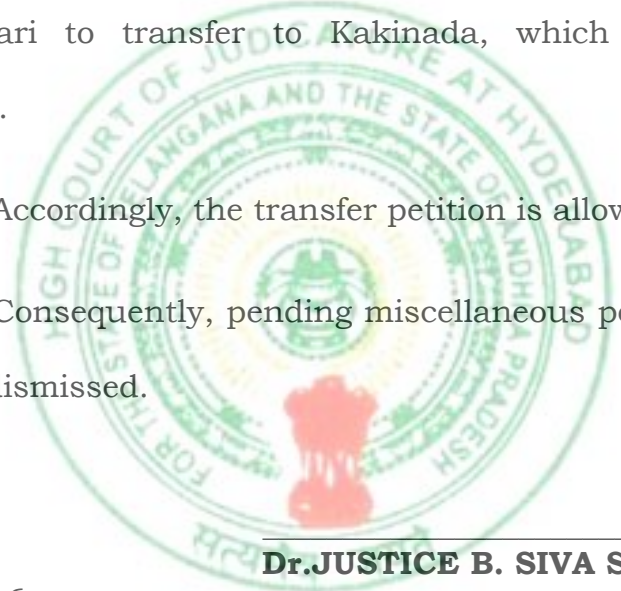
subsequently from the expression of the Apex Court in ***Shreya Singhal vs Union of India***².

6) Thus, what the principle laid down in the expression supra even is generally not to interfere. The very expression itself indicates exception to the general principle of the choice of the plaintiff to lay the claim and the power of the Court to consider the hardship including of the defendants, if at all.

7) Having regard to the above, to sub-serve the ends of justice, it is a fit case, for atleast three of the defendants reside at East Godavari to transfer to Kakinada, which is nearby to Samarlakota.

8) Accordingly, the transfer petition is allowed. No costs.

9) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.



Dr.JUSTICE B. SIVA SANKARA RAO

Dt.21.09.2016
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² 2015 (5) SCC 1