

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 350 OF 2017

ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw O.S.No.168 of 2008 pending on the file of the I Senior Civil Judge, City Civil Court, Hyderabad and transfer to any Court at Ranga Reddy District on the ground that the petitioner will not get fair justice if the matter is tried by the present Presiding Officer.

2. The basis for filing this petition is that the petitioner filed I.A.No.4 of 2013 to produce the original Sale Deed and other material to prove that the respondent is not owner of the subject premises, but the said I.A. was dismissed. Hence, the matter was carried to this Court in C.R.P.No.6407 of 2016 and that the said C.R.P. was also dismissed in the year 2016. When her grievance is not considered by the I Senior Civil Judge, Hyderabad, she filed Tr. O.P.No.1565 of 2015 before the Chief Judge, City Civil Court, Hyderabad and the same was dismissed on 10.03.2016 and thereafter, her evidence was closed on 27.02.2017. Then immediately she filed I.A for setting aside the order closing her evidence and it is pending for disposal. Therefore, she is apprehending that she would not get fair justice, if the matter is tried by the I Senior Civil Judge, Hyderabad and prayed to

withdraw the suit and transfer to any Court at Ranga Reddy District.

3. At the stage of admission, Sri P.V.Venkateswara Rao, Advocate appeared on behalf of Sri P.Harinath Gupta, learned counsel for the petitioner, contended that the petitioner is apprehending that she may not get fair justice in view of the conduct of the present Presiding Officer of the Court and drawn the attention of this Court to the order dated 10.03.2016 in Tr.O.P.No.1565 of 2015 passed by the Chief Judge, City Civil Court, Hyderabad declining to withdraw and transfer O.S.No.168 of 2008 pending on the file of I Senior Civil Judge, City Civil Court, Hyderabad.

4. As seen from the material, the suit is pending since 2008, i.e almost (9) years old. The trial was commenced and thereafter, the petitioner resorted to the same procedure by filing an application under Section 24 of C.P.C making allegations against the then Presiding Officer of the Court. But this Contention was turned down by the Chief Judge, City Civil Court, Hyderabad and dismissed the transfer petition on the ground that the Officer concerned was already transferred and later another Presiding Officer was posted and took charge of the office of I Senior Civil Judge, Hyderabad. While the suit is pending for trial, the petitioner filed Tr.O.P.No.940 of 2017 on the ground that when the

Court ordered notice, the counsel for the respondent is not cooperating with the petitioner to receive notice and that when the same was brought to the notice of the Court, the I Senior Civil Judge, Hyderabad simply adjourned the matter to another date for service of notice. Thus, the Presiding Officer of the Court not entertaining the petitions on one pretext or the other. Thereby, she entertained a doubt about getting fair justice. The petitioner also further contended that she filed I.A.No.4 of 2013 to produce certain documents, which was dismissed and the same was carried to this Court in C.R.P.No.6407 of 2016 and also filed I.A for framing additional issue and other application to change advocate. The Chief Judge, City Civil Court, Hyderabad by order dated 11.04.2017 dismissed the petition recording its reasons. Again Tr.O.P is filed before this Court without challenging the order in Tr.O.P.No.940 of 2017 on the same ground.

5. The first and foremost ground is that the Presiding Officer of the Court is not entertaining petitions without served notices on the respondent's counsel and whereas the counsel for respondent appearing before the trial Court is refusing to receive advance notice in interlocutory application filed by the petitioner. Whenever the petitioner filed an application, the petitioner has to serve advance notice in that interlocutory application to the respondent in advance i.e. not less than three days before the date fixed for hearing on the advocate. Whenever the party appears by such

advocate, notices of such application may be served on him by registered post with acknowledgment due or by speed post. Thus, it is mandatory to serve notice on the respondent's counsel, three days in advance when the matter is fixed for hearing and if the advocate refuse to receive the notice, the petitioner can file an affidavit stating the facts. But, no such procedure is followed and started blaming the Presiding Officer of the Court for not entertaining the applications. Therefore, this is not a ground to withdraw and transfer the suit.

6. The other reason for seeking transfer of the suit is that apprehension of not getting fair justice. The basis for apprehension is that her evidence was closed and filed an application for reopening her evidence it is pending for disposal before the trial Court. Closer of evidence is a matter of course when the petitioner did not produce any witness and that the Court is bound to close evidence and proceed with the matter. Merely because her evidence was closed, the bonafides of the Presiding Officer cannot be doubted and on that ground it is difficult to conclude that she will not get fair justice.

7. When the petitioner requested for withdrawal and transfer of pending suit on the ground of apprehension that she would not get fair justice, such apprehension must be reasonable and supported by some material. But here, except bald allegation about pendency

of the petition for reopening of the evidence in the suit, there is absolutely nothing on record to substantiate her contention. When such apprehension is not based on any material, the Court can refuse to withdraw and transfer the matter by exercising power under Section 24 of C.P.C. and in similar circumstances, the Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹ where the Apex Court framed the following guidelines:

“In matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.*
- ii) Availability of legal aid service.*
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV Code of Civil Procedure.*
- iv) E-Mail address/phone number, if any, at which litigant from out station may communicate.”*

8. In view of the law declared by the Apex Court that the apprehension that the petitioner would not get fair justice is without any material and remains as an allegation somehow to get the matter transferred.

¹ AIR 2017 SC 1345

9. The petitioner earlier filed application making serious allegations against the then Presiding Officer, which ended in dismissal i.e. Tr.O.P.No.1565 of 2016, on 10.03.2016 and the petitioner again started making allegations against the Presiding Officer without any basis. Apart from that the Court can grant not more than three adjournments to any party to produce their evidence and it appears from the record that she obtained adjournment successfully for more than three times for one reason or the other and filed application one after the other. The Chief Judge, City Civil Court, Hyderabad also made certain observations about filing of applications one after the other thereby preventing the Court to proceed with trial of the suit and the petitioner is guilty of such conduct thereby she is disentitled to claim relief under Section 24 of C.P.C. Therefore, I find no ground to withdraw suit in O.S.No.168 of 2008 pending on the file of the I Senior Civil Judge, City Civil Court, Hyderabad and transfer to any Court at Ranga Reddy District and the Tr.C.M.P is liable to be dismissed.

10. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date: 23-06-2017.
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