THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Tr.C.M.P.No.251 of 2015

ORDER:

1 This petition is filed under Section 24 of C.P.C seeking to withdraw O.S.No.24 of 2015 pending on the file of the Court of the VI Additional District Judge, Kadapa and transfer the same to the Court of the III Senior Civil Judge, Vijayawada in Krishna District to try jointly along with O.S.No.1412 of 2014.

2 The contention of the learned counsel for the petitioner two fold. 1) The cause of action for filing of both the suits is one and the same, the parties to the proceedings are one and the same and the relief sought for in both the suits is one and the same, and 2) In order to avoid duplication of evidence it is just and necessary to withdraw O.S.No.24 of 2015 pending on the file of the Court of the VI Additional District Judge, Kadapa and transfer the same to the Court of the III Senior Civil Judge, Vijayawada in Krishna District to be tried jointly with O.S.No.1412 of 2014

3 *Per contra,* the learned counsel for the first respondent submitted that there is no nexus between the suits, therefore, the relief sought by the petitioner is not sustainable either on facts or in law. He further submitted that the cause of action in both the suits is not one and the same and hence the present petition is liable to be dismissed.

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

5 On 22.07.2014 the first respondent got issued a notice to the petitioner directing him to pay the amount covered under a cheque, failing which he will proceed against him under Section 138 of Negotiable Instruments Act. On 11.08.2014 the petitioner got issued a reply to the notice dated 22.07.2014 issued by the first respondent denying the averments made in the notice. On 19.08.2014 the first respondent issued a notice to the petitioner tendering apology for issuance of notice dated 22.07.2014. Thereafter the petitioner filed O.S.No.1412 of 2014 on the file of the Court of the III Additional Senior Civil Judge, Vijayawada against the respondent claiming damages of Rs.10.00 lakhs. Subsequently, the first respondent filed O.S.No.24 of 2015 on the file of the Principal District Judge, Kadapa against the petitioner and another for recovery of an amount of Rs.25,44,000/- basing on a promissory note dated 27.08.2012. Pending the said suit, the first respondent filed I.A.No.137 of 2015 under Order 38 Rule 5 seeking ad interim attachment of the house property of the petitioner and the same was allowed.

6 The question that falls for consideration in this petition is "whether cause of action in both the suits is one and the same or not?"

7 To substantiate the argument, the learned counsel for the petitioner has drawn attention of this Court to the ratio laid down in ***State Bank of India v. Ranjan Chemicals Ltd***[1]

> 10. A joint trial can be ordered by the court if it appears to it that some common question of law or fact arises in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. Where the plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counter claim in the consolidated action, a joint trial can be ordered. An order for joint trial is considered to be useful in that, it will save the expenses of two attendance by counsel and witnesses and the trial judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. If therefore the claim made by the Company can be tried as a. counter claim by the Debt Recovery Tribunal, the Court can order joint trial on the basis of the above considerations. It does not appear to be necessary that all the questions or issues that arise should be common to both actions before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions.
>
> 11. A joint trial is ordered when a Court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the Court as an inherent power. It is not possible to accept the argument that every time the Court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A Court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim of the company in the suit could be considered to be a claim for set off and a counter claim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the bank as a cross suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil Court since that is a proceeding before a Tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified.

8 The same principle was followed by the Madras High Court in ***P.V.Arumugam vs. Gurusamy***[2]**.**

9 Let me consider the facts of the case on hand in the light of the above legal principle.

10 The respondent issued a legal notice on 22.7.2014 as if the cheque issued by the petitioner was dishonoured for want

[1] (2007) 1 SCC 97
[2] 2008 LawSuit (Mad) 1368

sufficient funds. The petitioner got issued a reply notice on 11.08.2014 stating that he never issued any cheque, much less the cheque in question, in favour of the respondent. On 19.08.2014 the respondent got issued a notice tendering apology for issuance of notice dated 22.07.2014 and has withdrawn the said notice. It is the contention of the respondent that by mistake his counsel issued the notice to the petitioner instead of one Rama Satyanarayana. It is the case of the respondent that the petitioner herein and said Rama Satyanarayana have jointly executed a promissory note in his favour. The cause of action for filing of the suit O.S.No.1412 of 2014 is the legal notice dated 22.07.2014, whereas, the cause of action for filing of the suit in O.S.No.24 of 2015 is based on a promissory note dated 27.8.2012. The nature of the evidence to be adduced in both the suits is entirely different. In O.S.No.1412 of 2014 the burden of proof lies on the petitioner herein to establish his case. In O.S.No.24 of 2015 the burden of proof lies on the respondent to prove the execution of the promissory note jointly by the petitioner herein and another person by name Rama Satyanarayana. The relief sought in O.S.No.1412 of 2014 is damages, whereas, O.S.No.24 of 2015 was filed for recovery of money. Therefore, the relief sought for in both the suits is entirely different.

11 The nature of evidence to be adduced in both the suits is not one and the same. The parties to be examined in both the

suits are not one and the same. In such circumstances, the question of avoiding of duplication of evidence does not arise in this case. The nature of both the suits is entirely different. The petitioner and one Rama Satyanarayana are defendants in O.S.No.24 of 2015. In the cause title of the present Tr.CMP, the said Rama Satyanarayana is shown as not necessary party to the proceedings. Rama Satyanarayana is the affected party without whose presence O.S.No.24 of 2015 cannot be transferred. For one reason or the other, Rama Satyanarayana is not shown as a necessary party in this petition.

12 In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract hereunder the relevant provision of the Andhra Pradesh Civil Courts Act 1972 as amended by Act No.8 of 2016.

> Be it enacted by the Legislature of the State of Andhra Pradesh in the Sixty-Sixth Year of the Republic of India as follows:-
>
> 1. ....
>
> 2. In the Andhra Pradesh Civil Courts Act, 1972 (hereinafter referred to as the principal Act), in Section 16,-
>
> (i) in sub-section (1), for the words "which exceeds rupees ten lakhs", the words "which exceeds rupees fifteen lakhs" shall be substituted.

13 A perusal of the amendment made to the Andhra Pradesh Civil Courts Act, 1972, the pecuniary jurisdiction of the Senior Civil Judge's Court in the State of Andhra Pradesh has been enhanced from Rs.10,00,000/- up to Rs.15,00,000/- with effect from 13.04.2015. So, as on today the pecuniary jurisdiction of

the Senior Civil Judge's Court in the State of Andhra Pradesh is Rs.15,00,000/-. The first respondent filed the suit for recovery of an amount of Rs.25,44,000/-. The Senior Civil Judge Court has no pecuniary jurisdiction to entertain the suit in O.S.No.24 of 2015. In such circumstances, transfer of that suit to the Court of III Senior Civil Judge, Vijayawada in Krishna District is not permissible under law. Hence the present Tr.CMP is liable to be dismissed in limini on this ground alone.

14 Viewed from any angle, the present Tr.CMP is not sustainable either on facts or in law. Hence the same is liable to be dismissed.

15 In the result, the Tr.CMP is dismissed. As a sequel, miscellaneous petitions, if any, pending in this Petition shall stand closed.

T. SUNIL CHOWDARY, J.

Date:09.02.2017
Kvsn