

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION Nos.334 and
336 OF 2017

COMMON ORDER:

Tr.C.M.P.No.334 of 2017 is filed under Section 24 of Code of Civil Procedure, 1908 (for short, 'C.P.C') to withdraw G.O.P.No.100 of 2017 on the file of Judge, Family Court, Ranga Reddy District at Miyapur and transfer the same to the Judge, Family Court, L.B.Nagar, Ranga Reddy District, or any other competent Court.

2. Tr.C.M.P.No.336 of 2017 is filed under Section 24 C.P.C. to withdraw H.M.O.P.No.101 of 2017 on the file of Judge, Family Court, Ranga Reddy District at Miyapur and transfer the same to the Judge, Family Court, L.B.Nagar, Ranga Reddy District, or any other competent Court.

3. The petitioner herein filed O.P.No.100 of 2017 on the file of Judge, Family Court, Ranga Reddy District at Miyapur, for restitution of conjugal rights. He also filed H.M.O.P.No.101 of 2017 on the file of Judge, Family Court, Ranga Reddy District at Miyapur, seeking custody of his child namely Yuveen Reddy, aged about two and half years.

4. The main allegation for transfer of aforesaid O.Ps., is that the petitioner, who is husband of the respondent herein, filed an application before the Court below claiming visitation rights of his child, but the Court below did not advance the petition and adjourning the matter at request of the respondent herein without hearing and considering the urgency and such adjournments are

detrimental to the interest of the petitioner and prayed for transfer of the cases.

5. It is not in dispute that the petitioner is husband of the respondent. The petitioner herein filed a petition claiming visitation rights of his child, who is in the custody of the respondent. But, the trial Court did not take into consideration the urgency in the matter and adjourning the case cannot be accepted at this stage. In any view of the matter, the petitioner, being father of the child, is entitled to visit the child out of his love and affection. But granting adjournment by itself is not a ground to withdraw and transfer the matters from one Court to another. In **Dr.Reddy's Laboratories Ltd., Hyderabad v. Pulletikurhti Varaha Chandra Bose and others**¹, wherein this Court held as under:

“Necessity for transfer of suit from one Court to another, would arise if only there exists any similarity of causes of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit, cannot be granted.”

6. Similarly, in latter judgment reported in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and others**², the Apex Court held as follows:

“Section 24 of Code of Civil Procedure confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it

¹ 2004 (4) LAD 719

² 2008 (3) Supreme Court Cases 659

cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 of Code of Civil Procedure cannot be exercised *ipse dixit* in the manner in which it has been done in the present case.

It is further held that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
- (iii) issues raised by the parties;
- (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;
- (v) important questions of law involved or a considerable section of public interested in the litigation;
- (vi) “interest of justice” demanding for transfer of case, etc.

The above guidelines are illustrative.

The above guidelines are illustrative, but not substantive guidelines.

7. Therefore, keeping in mind the guidelines laid down by the Apex Court, the Court has to decide whether there is any necessity to withdraw and transfer the matters from one Court to another.

8. In the case on hand, the allegation is not against the respondent, it is against the Presiding Officer of the Court concerned, who is adjourning the matter even without considering the advancement petition filed by the petitioner. That by itself would not fall any of the parameters laid down by the Apex Court. Therefore, I find that it not a fit case to withdraw and transfer the O.Ps., however, in view of urgency pleaded by the petitioner to visit his child, who is in the custody of the respondent, it is appropriate to direct the Judge, Family Court, Miyapur to decide the Interlocutory Application filed by the petitioner, for visitation rights of his child.

9. Accordingly, these two Transfer Civil Miscellaneous Petitions are disposed of directing the Judge, Family Court, Miyapur, to decide the Interlocutory Application filed by the petitioner for visitation rights of his child, within one month from the date of receipt of a copy of this order, after giving due opportunity to both parties, in accordance with law. Miscellaneous petitions, if any, pending in these two petitions shall stand closed.

M. SATYANARAYANA MURTHY, J

JUNE 05, 2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 05.06.2017

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