

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2018

PRONOUNCED ON : 03.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No.539 of 2018

and

CMP.No.13269 of 2018

1.A.Viji

2.Minor Prasanna

Rep.by Guardian Mother Viji

3.Minor Dhanush

Rep.by Guardian Mother Viji

4.Duraisamy

5.Deivanai ... Petitioners

Vs.

1.B.Ravi

2.Branch Manager

The New India Assurance Company Ltd.,

482, 483 IIIrd Floor, SNV Chamber Building,

Power House Bus Stop,

Cross cut road, Gandhipuram,

Kovai. ... Respondents

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw and transfer the case MCOP No.131 of 2012 on the file of the Sub-Ordinate Court at Tirupur to the Sub-ordinate Court at Sathyamangalam.

For Petitioners : Mr.R.Vijayan

For Respondent : No appearance

No.1 set exparte vide order

dated 28.09.2018

For Respondent : Mr.C.Sangamithirai

No.2

ORDER

The petition has been laid seeking transfer of MCOP No.131 of 2012 pending on the file of the Sub-Court, Tirupur to Sub-Court, Sathyamangalam.

2.According to the petitioners, they are the claimants in MCOP No.131 of 2012 on the file of the Sub-Court, Tirupur and it is stated that the first petitioner is working as legal aid convenor in Sathyamangalam Court Campus, Erode District and therefore, according to them, if the proceeding is conducted at Sathyamangalam Court, the same would be convenient to the petitioners and further,

the first petitioner is also required to maintain her aged parents and look after her minor children and therefore, prayed for the transfer of the MCOP case from Tirupur Court to Sathyamangalam Court.

3.The second respondent, who has contested the transfer request of the petitioners, putforth that the second respondent has taken a plea in the counter laid in the main MCOP case that even the Court at Tirupur, where MCOP had been laid, is not having the jurisdiction to entertain the matter. Furthermore, it is also contended by her that the reasons projected by the petitioners for seeking the transfer are untenable and the petitioners having laid the case at Tirupur Court, they are required to proceed with the same in the manner known to law and the convenience of the petitioners as such would not be a germane reason for effecting the transfer prayed for and accordingly, prayed for the dismissal of the transfer petition.

4.The only reason projected by the petitioners for seeking the transfer is that inasmuch as the first petitioner is working at Sathyamangalam Court Campus as Legal Aid Convenor and also requiring to look after her aged parents and minor children, according to them, they would be convenient, if the proceeding is conducted at Sathyamangalm Court. However, the reason projected for transfer as such cannot be accepted readily. The petitioners being represented by an able advocate at Triupur Court, considering the nature of the proceeding laid by the petitioners at Triupur Court, it is seen that the petitioners' presence may not be required on all the hearing dates. The advocate, who is appearing on behalf of the petitioners, could very well attend the proceeding at Tirupur Court during their absence as per the instructions received from the petitioners now and then and only on the hearing date, when the evidence of the petitioners is to be tendered, the presence of the petitioners i.e. the first petitioner may be required. In such view of the matter, to say that the petitioners would find it difficulty to conduct the case at Triupur Court as such cannot be readily accepted. When the petitioners have chosen Tirupur Court as the forum for instituting the case, thereafter, the petitioners cannot be allowed to plead convenience and seek the transfer of the case to other Court and in particular, when the alleged convenience projected by the petitioners as such not being a acceptable cause as such for effecting the transfer. It is seen that as rightly put forth by the second respondent, only to delay the proceeding of the Court below, the present transfer petition has come to be laid.

5.Furthermore, as abovenoted, the second respondent has also questioned the jurisdictional aspect of the Triupur Court chosen by the petitioners for laying the MCOP case and according to the second respondent, with a view to avoid the abovesaid defence, the petitioners have come forward with the transfer request and the said contention cannot be easily discarded.

For the reasons aforestated, I do not find sufficient cause for accepting the transfer request and resultantly, the Transfer Civil Miscellaneous petition is dismissed and Consequently, connected CMP.No.13269 of 2018 is also dismissed.

03.10.2018

Index : Yes / No

Internet : Yes / No

sms

To

- 1.The Sub-Ordinate Court, Tirupur.
- 2.The Sub-ordinate Court, Sathyamangalam.

T.RAVINDRAN, J.

sms

Pre-delivery Order made
in Transfer CMP.No.539 of 2018
and
CMP.No.13269 of 2018

03.10.2018