

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.494 of 2017

ORDER:

This Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), to withdraw the O.S.No.336 of 2017 pending on the file of X Chief Judge, City Civil Court, Hyderabad, and transfer the same to the file of District Court at Jaggaiahpet, Krishna District.

2. Heard.

3. In the affidavit filed in support of the petition, it is stated that the petitioner is elected as MPTC Member of Gandepalli Village, Kanchikacherla Mandal, Krishna District; that since he is a responsible person, the people of Gandepalli Village have approached him and explained their grievance; that the petitioner along with the said village people gave a representation, dated 07.01.2017 to the Mandal Revenue Officer, Kanchikacherla, briefly intimating about movement of heavy vehicles to the respondent-company causing accidents, deaths, inconvenience to villagers, discharge of polluted water outside the premises causing crop loss, smell and health problems to villagers and cattle and that the industry is drawing water from Munneru river affecting lift irrigation. Basing on the said representation, a news item was published in Andhra Jyothi Telugu daily newspaper on 11.01.2017, which caused damage to reputation of the respondent-company, the respondent filed O.S.No.336 of 2017 on the file of X Chief Judge, City Civil Court, Hyderabad, claiming damages of Rs.100 lakhs.

4. Learned counsel for the petitioner would contend that the factory of the respondent is situated at Kanchikacherla, Krishna District; that the persons, who are going to give evidence in the aforesaid suit, are also staying at Kanchikacherla; that all the officials mentioned in the plaint are staying at Krishna District; that with a view to harass the petitioner, the respondent filed suit at Hyderabad; that since all the witnesses proposed to be examined are staying at Kanchikacherla, Krishna District, and to avoid inconvenience to the petitioner and his witnesses, the O.S.No.336 of 2017 pending on the file of X Chief Judge, City Civil Court, Hyderabad, may be transfer to the file of District Court, Jaggaiahpet, Krishna District.

5. The respondent filed counter-affidavit denying the material allegations, *inter alia* contending that none of the grounds raised, more particularly in para No.4 of the plaint, are sufficient to withdraw O.S.No.336 of 2017 from the file of X Chief Judge, City Civil Court, Hyderabad, and transfer the same to the file of District Judge, Jaggaiahpet, Krishna District; that the inconvenience caused to any party and witness alone is not a ground to exercise the power under Section 24 C.P.C to transfer the suit and requested the Court to dismiss the petition.

6. During hearing, learned counsel for the petitioner reiterated the contentions, mainly, demonstrating that all the witnesses proposed to be examined in the subject suit are staying within jurisdictional limits of Kanchikacherla Village, Krishna District; that if the suit is withdrawn and transferred to the file of District Judge, Jaggaiahpet, Krishna District, it is convenient for the

petitioner, his witnesses and they can also avoid waste of time and expenses and requested the Court to withdraw the suit.

7. Learned counsel for the respondent opposed the petition on the ground that inconvenience is not a ground to exercise the power under Section 24 CPC and placed reliance on the judgments reported in **Indian Overseas Bank, Madras v. Chemical Construction Company and other¹**, **Ruchi Ram Khattar v. Sarah Narsain, Shah and another²**, **Tiruvenkitan v. Anantha Kumar³**. In all three judgments, the Court held that inconvenience is not a ground to transfer the cases and applying the principles laid down in the above judgments, he prays to dismiss the petition.

8. M/s. Sentini Bio-products private limited, a company registered under the Companies Act, having its registered office at Hyderabad. The petitioner is not disputing the territorial jurisdiction of the Court at Hyderabad. But, the only ground urged before this Court is that it is inconvenience to the petitioner and his witnesses to give evidence to disprove the claim of the respondent in the suit, as they have to undertake journey covering the distance more than 200 kilometres from Jaggaiahpet, Krishna District to Hyderabad, and requested the Court to withdraw the suit on this ground alone.

9. It is clear from the contention of the petitioner that it is inconvenient for the petitioner and his witnesses to appear and give evidence before X Chief Judge, City Civil Court, Hyderabad,

¹ (1979) 4 Supreme Court Cases 358

² AIR 1928 Lah 159

³ ILR 1991 (1) Kerala 565

where the suit is pending. In **Ruchi Ram Khattar's case**, it was held that inconvenience to the defendant is not a ground to withdraw and transfer any suit. The principle, however, is well established that it is the right of the plaintiff to choose the forum for his action and that in deciding whether the plaintiff should be deprived of that right a very strong case must be made out by the defendant, and further that in deciding whether a suit should or should not be transferred it is not merely the convenience of the defendant that has to be considered, but the plaintiff's convenience also should be borne in mind.

10. The Court come to specific conclusion that inconvenience of the parties is not a ground, but the Court has to look into the inconvenience to both parties i.e., the plaintiff and the defendant. The Apex Court in **Indian Overseas Bank's case** laid down certain principles at para 16, which read as follows:

“The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.”

The same view is expressed in **Thiruvenkitan's case**. While observing that mere inconvenience pointed out by the Defendant would not be sufficient to deprive the plaintiff of his choice of forum. The well accepted principle of law is that transfer of a suit is effected by the Court for proper and convincing grounds. No

Court would grant transfer for mere asking by a party. If these principles are applied to the present facts of the case, the Court has to weigh the inconvenience being caused to the plaintiff and the defendant, in case of continuing the proceedings or transferring the proceedings from one Court to another. None of the parties to the proceedings do not disclose the names of witnesses, their addresses and other details, which they are proposed to be examined and in the absence of the same, it is difficult to the Court to weigh inconvenience being caused to either of the parties. Therefore, I find no ground to exercise the power under Section 24 CPC to withdraw O.S.No.336 of 2017 pending on the file of X Chief Judge, City Civil Court, Hyderabad, and transfer the same to the file of District Judge, Jaggaiahpet, Krishna District. However, liberty is given to the petitioner to file an appropriate application after furnishing details of witnesses proposed to be examined in the suit O.S.No.336 of 2017, explaining inconvenience being caused to either of the parties.

11. With the above direction, the Transfer Civil Miscellaneous Petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY,J

NOVEMBER 01, 2018

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



Tr.C.M.P.No.494 of 2017

Date:01.11.2018

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