

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 54 OF 2018

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw F.C.OP.No.2518 of 2017, pending on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to the file of the Judge, Family Court, Nalgonda to try along with O.P.No.42 of 2017, pending on its file on the ground that the petitioner/wife filed petition under Section 13(1a) and (1b) of the Hindu Marriage Act, 1956 for dissolution of marriage by granting decree of divorce, which is pending for adjudication. Whereas, the respondent/husband filed petition under Section 9 of the Hindu Marriage Act read with Section 7(a) of the Family Courts Act, 1984 for restitution of conjugal rights.

Learned counsel for the petitioner contended that if both OPs are tried by different Court, it may lead to conflicting of decisions and it is also contended that DVC.No.48 of 2017 is pending on the file of Special Judicial First Class Magistrate, (Mobile), Nalgonda and a crime was registered against the respondent for the offence punishable under Section 498-A IPC, charge sheet is also filed before the Judicial Magistrate of First Class, Nalgonda and pending for trial and that the respondent is attending the Court before the Judge, Family Court and Judicial First Class Magistrate, Mobile

Court, Nalgonda in connection with FCOP and DVC, if FCOP.No.2518 of 2017 before the Judge, Family Court, Ranga Reddy District, L.B.Nagar is withdrawn and transferred to the Court at Nalgonda and tried along with O.P.No.42 of 2017, it would be more convenient for her to adduce evidence for deciding the matter in dispute. Hence, this Tr.C.M.P.

Notice on respondent served and proof of service filed, none appeared.

The respondent filed F.C.O.P.No.2518 of 2017 before the Judge, Family Court, Ranga Reddy District, L.B.Nagar under Section 9 of the Hindu Marriage Act for restitution of conjugal rights alleging that the petitioner left the company of the respondent without any reasonable excuse. But the petitioner denied such desertion and filed petition under Section 10(1)(3a) and (3b) of the Hindu Marriage Act for grant of divorce on the ground of cruelty. If for any reason, both OPs are tried by two different Courts, there is every possibility of conflicting decision. Therefore, to avoid conflicting decision, since the parties and the nature of dispute is one and the same, I find that it is a fit case to withdraw F.C.O.P.No.2518 of 2017 from the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer to the file of Judge, Family Court, Nalgonda to try along with O.P.No.42 of 2017.

This Court cannot exercise its discretionary jurisdiction under Section 24 C.P.C on mere asking unless the Court satisfies that there is a possibility of conflicting decisions. However, the Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others**¹ held that:

“Section 24 CPC 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 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 CPC 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;

¹ 2008(3) SCC 659

- (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, but not substantive guidelines.”

In view of the above guidelines, the Court finds that there is possibility of conflicting judgments in the event of disposal of two petitioners by two different Courts, the Court can exercise its discretionary jurisdiction to withdraw and transfer the case.

In the result, the Tr.C.M.P. is allowed. F.C.O.P.No.2518 of 2017 pending on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar and transferred the same to the Judge, Family Court, Nalgonda to try along with O.P.No.42 of 2017. There shall be no order as to costs.

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

M.SATYANARAYANA MURTHY, J.

Date: 01.03.2018
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