

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.686 of 2018

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 24.10.2017 passed in Tr.O.P.No.1783 of 2017 by the Chief Judge, City Civil Court, Hyderabad, dismissing the petition filed under Section 24 of CPC for withdrawal of suit in O.S.No.604 of 2013 pending on the file of VI Additional Senior Civil Judge, City Civil Court, Hyderabad, and transfer to any other competent Court.

2. The petitioner filed application under Section 24 of CPC on the ground that the trial Court was acting in a biased manner as it was not treating both the plaintiff and defendant in the same manner. It was specifically averred that the trial Court made P.Ws.1 and 2 to sat till 5.00 PM during their cross-examination to accommodate the defendant and his counsel, but the trial Court commented on the counsel for plaintiff that the Court need not wait till his arrival, particularly on 04.07.2017 at 12.00 PM, and that the Courts are loaded with number of cases and it is impossible to start the proceedings of trial at a time all the cases and therefore, it is regular practice at the trial Court seeking pass over of the matter during call work and at the convenient time of the day work of the Court, trial will be conducted. But the trial Court allegedly applying a different scale in treating the parties, discriminating one another and therefore, the petitioner sought for withdrawal of suit in O.S.No.604 of 2013 pending on the file of VI Additional Senior Civil Judge, City Civil Court, Hyderabad.

3. The Court below dismissed the petition on the ground that there is no basis, the apprehension of petitioner is misconceived and placed reliance on the judgment in **Lalita Rajya Lakshmi and another V.State of Bihar and another**¹, wherein it was specifically held that if there are circumstances in a case, which raise a reasonable apprehension in mind of person applying for transfer that he would not receive fair dealings at his trial, or that he may not have a fair and impartial trial and may not get justice in Court, where suit is pending, case should be transferred. Aggrieved by the order, the present revision is filed reiterating the same contentions, more particularly, non consideration of the allegations against the Officer of the Court in discriminating the plaintiff and defendant.

4. During hearing, the petitioner raised the same contentions before this Court while contending that the order of the trial Court is erroneous and that when the trial Court did not exercise its discretion that conferred on it, this Court can interfere with the order impugned while exercising power under Article 227 of the Constitution of India.

5. As seen from the material on record, certain allegations were made against the Officer in treating both plaintiff and defendant discriminately. But, it is not the contention of petitioner that she will not get fair justice on account of such failure to grant adjournment or making to wait till the counsel attends the Court etc. Even assuming that the petitioner is apprehending that she would not get fair justice, there must be some basis for such apprehension.

¹ AIR 1957 Patna 198

6. The Apex Court laid down the following general principles to exercise jurisdiction under Section 24 of C.P.C. to withdraw a pending suit and transfer to any other Court in ***Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others***²:

"Section 24 of the 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 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 the 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 facts 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, but not substantive guidelines."

² AIR 2008 SC 1333

One of the grounds raised in the petition is covered by guideline No.iv referred to above. In a later judgment in ***Usmangani Adambhai Vahora Vs. State of Gujarat and another***³, the Apex Court considered the ground invented by parties that they would not get justice in the Court for seeking transfer of pending criminal case before one Court and transfer the same to other Court exercising power under Section 406 of the Code of Criminal Procedure (for short, 'Cr.P.C.'). The law is one and the same for withdrawal and transfer based on apprehension that the party would not get justice in the Court. The Apex Court in the above judgment adverted to the principles laid down in ***Gurcharan Dass Chadha Vs. State of Rajasthan***⁴, wherein it was held as follows:

"... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

Similarly, in ***Abdul Nazar Madani Vs. State of Tamil Nadu***⁵, in para No. 7, the Apex Court discussed the ground of apprehension that party will not get justice and concluded that the apprehension that he

³ S.L.P. (Criminal) Nos. 9374-9375 of 2015

⁴ AIR 1966 SC 1418

⁵ (2000) 6 SCC 204

will not get fair justice is absolutely mercurial and cannot be said to be reasonable. Therefore, in the absence of any material to substantiate the ground that he would not get justice, the Court cannot exercise power under Section 24 of C.P.C. to withdraw and transfer any matter pending on the file of one Court to other. In all the judgments of the Apex Court referred to above, it was held consistently held that there must be some basis for such allegations.

7. In the absence of any basis, it is difficult to exercise such power under Section 24 of C.P.C. to withdraw and transfer the pending matter on the file of the Courts subordinate to the District Court. Merely because the pendency in the Court is heavy and there is no possibility of taking up the matter, would not form a basis for exercising discretionary power under Section 24 of C.P.C., to withdraw and transfer the pending suit.

8. In any view of the matter, the allegations made against the Presiding Officer of the Court below about the biased treatment or discriminatory attitude or defective treatment, as alleged in the petition, is not based on any material. In the absence of any basis for such apprehension, the Court cannot withdraw and transfer the suit in O.S.No.604 of 2013 pending on the file of VI Additional Senior Civil Judge, City Civil Court, Hyderabad. The Court below having concluded that there is no basis for such apprehension dismissed the petition, such finding does not call for interference under Article 227 of the Constitution of India and the Court can exercise such power only in limited circumstances when the inferior Court assumes jurisdiction erroneously in excess of power, when refused to exercise

jurisdiction, when found an error of law apparent on the face of record, violated principles of natural justice and arbitrary or capricious exercise of authority or discretion, arriving at a finding which is perverse or based on no material, a patent or flagrant error in procedure, order resulting in manifest injustice and error both on facts and law or even otherwise. The Apex Court in **State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru**⁶ held that under Article 227 of Constitution of India, the High Court can interfere with the directions of the subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge.

9. In view of my foregoing discussion, I find no ground to exercise such power under Article 227 of the Constitution of India, since the District Judge has rightly exercised its jurisdiction that conferred on it, which warrants no interference by this Court. Consequently, the Civil Revision Petition is liable to be dismissed.

⁶ (34) 2005(3) ALT (CrI.) 125 (SC)

10. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

12th February, 2018

sj

