

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR. CIVIL MISCELLANEOUS PETITION No.116 of 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the CPC, is filed to withdraw O.P.No.824 of 2015 pending on the file of Family Court at L.B.Nagar and transfer the same to any other Court within twin cities or Rangareddy District for disposal in accordance with law on the ground that the Presiding Officer of the Family Court did not record the evidence what the witness stated and instead of recording as 'not true', recorded as 'it is true' missing of word 'not' would change the entire meaning of the answer, which is detrimental to the case of the petitioner.

The other contention of the learned counsel for the petitioner is that the Presiding Officer did not allow the counsel for petitioner to cross examine Rw.1 to his satisfaction and the 3rd ground is that the father of the respondent worked under the Presiding Officer when he worked as Presiding Officer in the Court at Nampally and thereby he is apprehending that the petitioner would not get proper justice and prayed to withdraw and transfer the case.

The petitioner also filed an affidavit of the counsel for the petitioner before the trial Court i.e, Sri Bokka Sinivasa Rao, making serious allegations against the Presiding Officer in recording the deposition of Rw.1 and not permitting the witness to cross examine Rw.1 to his satisfaction.

The first and foremost contention is that the Presiding Officer of the Court did not record the evidence what the witness stated and the word 'not' is found missing in the deposition, which would change the entire meaning of the answer given by Pw.1, which is detrimental to her interest. However, there is procedure to rectify such type mistakes, if the petitioner did not state as recorded by the Presiding Officer in the deposition and the

Advocate on record is entitled to file a Memo raising an objection about the mistake in deposition and if the mistakes are accidental or otherwise, the witness can be recalled under Order 18 Rule 17 CPC and explain the admission if any recorded. The learned counsel for the petitioner brought to the notice of this Court that the petitioner filed an application under Order 18 Rule 17 to recall PW.1, but those petitions were returned with an objection and the petitioner did not represent the same after complying objections. When the office of the Court raised an objection granting time to comply the objection, the duty of the Advocate is to re-present the same after compliance of the objection. Instead of following the general procedure to take steps to comply the objections, invited an order in the petition and mere filing the present petition, without complying the objections raised by the trial Court, is not maintainable and, therefore, this Court cannot exercise power under Section 24 of the CPC to withdraw and transfer the case to any other Court.

The other ground is that the counsel appeared before the trial Court was not permitted to cross examine Rw.1 to his satisfaction and that he was not allowed to advance argument freely and not allowed to mark the original documents of the petitioner even though the respondent admitted the documents. The witness i.e., Rw.1 was examined long back and after examining Rw.1, the counsel for the petitioner advanced argument without raising any objection, but now invented another story that he was not allowed to advance argument freely. If for any reason, the Presiding Officer did not allow him to submit his argument, there is a procedure for submitting argument, but nothing prevented the petitioner to file Written Arguments in detail even if the contention of the learned counsel for the petitioner is accepted and he can complain to the higher authorities when the Presiding Officer did not allow the petitioner to mark original documents or did not allow to cross examine Rw.1 or to advance

argument and having kept quite for a long period, the present affidavit is filed raising those objections, which are not based on any material. Hence, I find that it is not a fit case to withdraw and transfer the case to any other court at this stage.

The other ground is that the father of respondent worked under Presiding Officer of the Court earlier when the Officer worked in the Metropolitan Sessions Court and there is a possibility of influencing the officer by the father of the respondent. The petitioner adduced evidence and cross examined the respondent and advanced argument without any fear or apprehension, but now he is expressing apprehension that he would not get fair justice, that too, when the matter is posted for orders and this contention is raised for the first time and absolutely, there is no basis for these allegations.

An identical question came up before this Court in *Pothuri Tulasi Das v Pothuri Hari Prasad and another* (Transfer CMP No.79 of 2017, dt. 28.06.2017), wherein this Court considered in extenso the apprehension that he will not get fair justice and held that if it is based on some material, the court can exercise power under Section 24 of CPC to withdraw and transfer the case to any other Court. When such apprehension is without any basis, this Court cannot exercise such power on the basis of mere bald allegations in the petition and the petitioner did not produce any piece of evidence to substantiate his contention before this Court also and therefore, the said apprehension is not based on any material. Hence, it is not a fit case to withdraw and transfer the case to any other Court when the matter is posted for orders.

In *Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others*¹, the Apex Court laid down the following

¹ 2008 (3) SCC page 659

guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

- (1) Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (2) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.
- (3) Issues raised by the parties.
- (4) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.
- (5) important questions of law involved or a considerable section of public interested in the litigation.
- (6) interest of justice demanding for transfer of case etc.,”.

The Apex Court in “*Santhini v. Vijaya Venketesh*”², while overruling a part of the Judgment in *Krishna Veni Nagam v. Harish Nagam*³ held that while deciding with a petition filed under Section 24 of CPC, the judgments of any Court under Section 24 CPC are not precedents and each case has to be decided on its own merits.

Even otherwise, the allegations made in the petition would not create any suspicion and the apprehension of the petitioner is not based on any material. Therefore, I find no ground to exercise power under Section 24 of CPC, which is purely discretionary, at the stage when the OP is posted for Orders and therefore, this petition is liable to be dismissed as it devoid of merit.

Accordingly, this Transfer Civil Miscellaneous Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 06-03-2018
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² (2018) 1 SCC 1

³ (2017) 4 SCC 150



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