

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**Tr.C.M.P. NO.920 OF 2016**

**ORDER:**

This petition is filed under Section 24 of C.P.C to withdraw O.P.No.2125 of 2015 on the file of Judge, Family Court, Ranga Reddy District at L.B. Nagar and transfer the same to Judge, Family Court at Karimnagar.

O.P.No.2125 of 2015 is filed by the husband under Section 13(1)(ia)(ib) of Hindu Marriage Act for dissolution of marriage by granting decree of divorce on various grounds.

The present petition is filed by the wife only on two grounds.  
(i) that, no part of cause of action arose within the jurisdictional limits of Judge, Family Court, Ranga Reddy District at L.B. Nagar and (ii) that she is unable to appear before the Judge, Family Court, Ranga Reddy District at L.B. Nagar by undertaking journey of around 380 kms to and fro on every date of adjournment, as she is suffering from physical disability of 52%.

Learned counsel for the petitioner/wife reiterated the grounds urged in the petition, whereas, the learned counsel for the respondent/husband Sri K.V. Seshagiri Rao did not advance any argument.

As seen from the material on record, O.P.No.2125 of 2015 is filed by the respondent/husband before the Judge, Family Court, Ranga Reddy District at L.B. Nagar and it is pending for adjudication. On perusal, the petition discloses that, no part of cause of action arose within the territorial jurisdictional limits of Judge, Family Court, Ranga Reddy District at L.B. Nagar. But, this

aspect cannot be decided at this stage, while deciding a petition under Section 24 of C.P.C. However, it is clear from the Disability Certificate produced by the petitioner/wife dated 10.11.2010, issued by the Medical Board, Government of Andhra Pradesh, that the petitioner/wife is suffering from 52% disability.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of Court subordinate to High Court and its control, transfer to the other Court and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

In **Dr.Reddy's Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others**<sup>1</sup>, this Court held as follows:

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<sup>1</sup> 2004 (4) ALD page 719

*“Necessity for transfer of suits from one Court to another, would arise if only there exists any similarity of causes of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit, cannot be granted.”*

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others<sup>2</sup>**, the Supreme Court held as follows:

*“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 by the Supreme Court 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;

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<sup>2</sup> 2008 (3) Supreme Court Cases Page 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 Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

In view of the principles laid down by the Apex Court in the judgment referred supra, this Court can exercise such discretionary power. In the present case, the petitioner/wife is suffering from 52% physical disability and as per the Family Court’s Act, the petitioner has to appear on each and every date of adjournment before the concerned Court, but due to disability it is difficult for her. Therefore, on the sole ground that the petitioner is suffering from 52% physical disability and the inconvenience being caused to her, by exercising power under Section 24 C.P.C, applying the guidelines issued by the Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others** (referred supra) the this transfer civil miscellaneous petition is allowed.

In the result, the petition is allowed. O.P.No.2125 of 2015 is withdrawn from the file of Judge, Family Court, Ranga Reddy District at L.B. Nagar and transferred the same to Judge, Family Court at Karimnagar.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date:05.03.2018

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