

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.583 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw O.S.No.71 of 2017 pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad and transfer the same to II Additional District Court, Ranga Reddy District at L.B. Nagar.

O.S.No.71 of 2017 is pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad and O.S.No.12 of 2015 is pending on the file of II Additional District Court, Ranga Reddy District at L.B. Nagar. The main ground urged is that the parties in O.S.No.71 of 2017 and O.S.No.12 of 2015 are one and the same and the schedule of property is also one and the same and that, if both the suits are tried independently, there is a possibility of conflicting judgments and to avoid such conflicting judgments and multiplicity of the proceedings, sought to withdraw to withdraw O.S.No.71 of 2017 pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad and transfer the same to II Additional District Court, Ranga Reddy District at L.B. Nagar.

During hearing, learned counsel for the petitioners Sri K.V. Bhanu Prasad reiterated the contentions raised in the affidavit, while drawing attention of this Court to various reliefs claimed in both the suits and array of the parties to demonstrate

that, the claims of the parties are interlinked to one another. It is also contended that, to avoid multiplicity of litigation and waste of time of both parties and the Court, sought withdrawal of O.S.No.71 of 2017 pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad and transfer the same to II Additional District Court, Ranga Reddy District at L.B. Nagar.

Whereas, learned counsel for the first respondent contended that these two suits are based on two different cause of actions and if, both the suits are tried by two different Courts, question of conflicting decisions would not arise, as O.S.No.71 of 2017 is based on loan transaction and whereas, O.S.No.12 of 2015 is for specific performance of agreement of sale and prayed for dismissal of the petition.

The petitioners are defendants 1 & 2 in O.S.No.12 of 2015 pending on the file of II Additional District Court, Ranga Reddy District at L.B. Nagar and they are arrayed as defendant nos.1 & 2 in O.S.No.71 of 2017 pending on the file of to XII Additional Chief Judge, City Civil Court at Secunderabad. Defendant Nos. 3,4 & 5 in O.S.No.71 of 2017 are M/s. Indian Oil Corporation Ltd., M/s Corporation Bank and M/s Om Sai Baba Enterprises respectively, are not parties to the suit in O.S.No.12 of 2015. But, the fifth defendant in O.S.No.71 of 2017 filed O.S.No.12 of 2015 for specific performance. Further, in O.S.No.71 of 2017 pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad, the plaintiff-Sri M. Amba Prasad claimed a decree for recovery of

amount against defendant nos. 1 & 2 and no relief was claimed against the other three defendants i.e. defendant nos. 3 to 5, though they were arrayed as parties, since they are proper parties to the suit, in view of alleged subsisting agreement between the 5th defendant and the petitioners herein, who are the parties to O.S.No.12 of 2015. Further, O.S.No.12 of 2015 is filed for specific performance of agreement of sale with possession and part of consideration of Rs.50,00,000/- who paid. Therefore, the claims in both the suits and the documents sued upon, cause of action is distinct and even if, both the suits are tried by two different Courts, question of conflicting judgments would not arise, since O.S.No.71 of 2017 to pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad is for recovery of money simplicitor and whereas, O.S.No.12 of 2015 pending on the file of II Additional District Court, Ranga Reddy District at L.B. Nagar, for specific performance.

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)”

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

“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**², 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

¹ 2004 (4) ALD page 719

² 2008 (3) Supreme Court Cases Page 659

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;
- (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 guideline nos. 1 & 2 of **Kulwinder Kaur²** case, the Apex Court specified that balance of convenience or inconvenience to the plaintiff or the defendant or witnesses of a particular place of trial with regard to nature of evidence on the points involved in the suit, the Court can withdraw and transfer any pending suit to other places.

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 view of the law declared by the Court, though proper parties to the suit are one and the same i.e the defendant nos. 1 & 2 in both the suits are one and the same, O.S.No.71 of 2017 relates to recovery of money or liquidated sum, but whereas, the other suit is for specific performance pertaining to immovable property. Therefore, by applying the principle laid down in the above judgment, I find that none of the grounds are sufficient to exercise discretionary jurisdiction under Section 24 C.P.C to withdraw O.S.No.71 of 2017 pending on the file of XII Additional Chief Judge, City Civil Court at Secunderabad and transfer the same to II Additional District Court, Ranga Reddy District at L.B. Nagar, and the same is liable to be dismissed.

In the result the transfer civil miscellaneous petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:02.02.2018

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