

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No.741 OF 2016

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw O.P.No.713 of 2016 pending on the file of Judge, Family Court, City Civil Court, Hyderabad and transfer the same to the Judge, Family Court, Ranga Reddy District at L.B.Nagar to try along with F.C.O.P.No.974 of 2016 on the ground that the petitioner and respondent filed above two petitions under Section 13 (1) (ia) of Hindu Marriage Act for dissolution of marriage granting decree of divorce pending on the file of two different Courts.

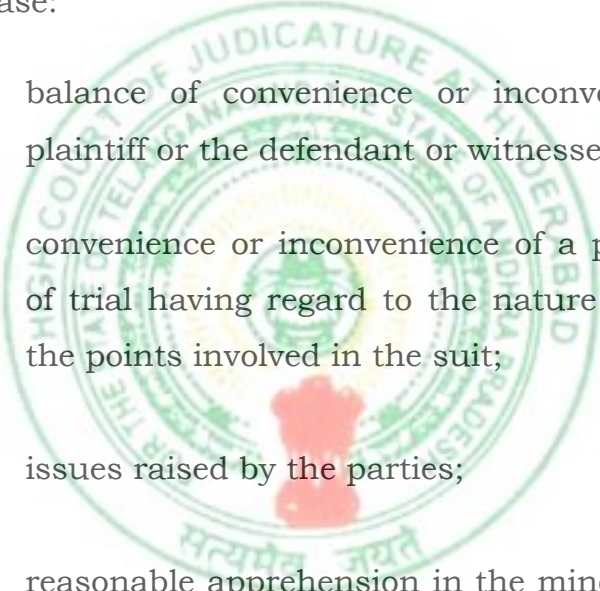
Both the parties alleged that they were subjected to cruelty by other and they are residents of Green Park Colony, Saroornagar, Ranga Reddy District and Hayathnagar Mandal, Ranga Reddy District respectively.

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 v. 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

¹ 2008(3) SCC 659

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.

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:

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- (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.

In view of the above guidelines, to avoid conflicting judgments as the cause of action in both the petitions is one and the same, I find that it is a fit case to withdraw the O.P.No.713 of 2016 pending on the file of Judge, Family Court, City Civil Court, at Hyderabad and transfer the same to the Judge, Family Court, Ranga Reddy District at L.B.Nagar, where F.C.O.P.No.974 of 2016 is pending, to try and dispose of both the matters in accordance with law.

Accordingly, O.P.No.713 of 2016 pending on the file of Judge, Family Court, City Civil Court, at Hyderabad is withdrawn and transferred the same to the Judge, Family Court, Ranga Reddy District at L.B.Nagar, where F.C.O.P.No.974 of 2016 is pending, to try/enquire and dispose of both the matters in accordance with law.

With the above direction, the Tr.C.M.P. is allowed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.02.2018
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