

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR.C.M.P.Nos.358 and 359 OF 2017

COMMON ORDER:

These transfer civil miscellaneous petitions are filed under Section 24 of Civil Procedure Code (for short "C.P.C.") to withdraw O.S.No.87 of 2017 pending on the file of the Senior Civil Judge Court, Markapur, Prakasam District and O.S.No.64 of 2017 pending on the file of the Senior Civil Judge Court, Medchal, Ranga Reddy District and transfer the same to the Senior Civil Judge Court, Repalle, Guntur District to be tried along with O.S.No.11 of 2016.

The petitioner herein/defendant No.1 in O.S.No.11 of 2016 pending on the file of the Senior Civil Judge, Repalle alleged that the plaintiff in O.S.No.11 of 2016 obtained blank signed promissory notes from her husband and got filed two suits at Medchal, Ranga Reddy District and Markapur, Prakasam District respectively for recovery of amount. The petitioner further contended that on account of pressure, her husband committed suicide and a complaint was lodged before the police and the same was registered as a case in Crime No.03 of 2016 of T.Sodayapalem Police Station, Guntur District for the offence punishable under Section 306 read with 34 of I.P.C., which is pending for investigation.

It is also contended that the defence set up by the petitioners herein/defendants in all the three suits pending before three different courts is one and the same. If the three suits are tried by

three different courts, there is possibility of conflicting judgment, hence to avoid such conflicting judgments, the petitioners sought withdrawal of O.S.87 of 2017 pending on the file of Senior Civil Judge Court, Markapur, Prakasam District and O.S.No.64 of 2017 pending on the file of Senior Civil Judge Court, Medchal, Ranga Reddy District, and transfer them to Repalle, Where the petitioners are residing permanently.

The respondents opposed the petitions on the ground that the plaintiffs in all the three suits are different and those suits cannot be tried together. Apart from that the cause of action is also different, therefore, the Court cannot exercise power under Section 24 of C.P.C. to withdraw the suits O.S.87 of 2017 pending on the file of Senior Civil Judge Court, Markapur, Prakasam District and O.S.No.64 of 2017 pending on the file of Senior Civil Judge Court, Medchal, Ranga Reddy District and transfer those suit to the Senior Civil Judge Court, Repalle, where O.S.No.11 of 2016 is pending.

In view of the specific contention, it is appropriate to advert to the details of suits filed and pending on the file of three different courts.

- (1) Mendu Venkata Suresh Babu filed O.S.No.11 of 2016 pending on the file of Senior Civil Judge Court, Repalle against the petitioners herein for recovery of Rs.10,93,290/- based on a promissory notes dated 02.04.2015 executed for Rs.9,90,000/-
- (2) Garigipati Ravi Babu filed O.S.No.87 of 2017 pending on the file of Senior Civil Judge Court, Markapur against

the petitioners herein for recovery of Rs.4,86,000/-
based on a promissory note dated 02.09.2015 executed
for Rs.3,75,000/-

- (3) Bandreddi Nagasai Ram filed O.S.No.64 of 2017 pending
on the file of Senior Civil Judge Court, Medchal against
the petitioners herein for recovery of Rs.5,19,200/-
based on a promissory note dated 01.09.2015 executed
for Rs.4,00,000/-

All the promissory notes were executed by the husband of
the petitioner No.1 herein. Thus, it is evident from the record that
all the three suits are filed by three different plaintiffs based on
three different causes of action against the petitioners herein, who
are the legal heirs of the deceased Rambabu. Their defence in all
the three suits is one and the same that the plaintiff in O.S.No.11
of 2016 obtained blank signed promotes and got filed suits before
different Courts. To avoid conflicting judgments, petitioners sought
to withdraw the pending suits.

Section 24 of C.P.C. reads thus:

“24. General power of transfer and withdrawal.(1) On the
application of any of the parties and after notice to the parties
and after hearing such of them as desire to be heard, or of its own
motion, without such notice, the High Court or the District Court
may, at any stage_

(a) transfer any suit, appeal or other proceeding pending
before it for trial or disposal to any Court subordinate to it and
competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending
in any Court subordinate to it, and

- (i) try or dispose of the same; or
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or
- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.”

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court, subordinate to High Court under its control 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

Under what circumstances, the power conferred on the Court under Section 24 of C.P.C. is to be exercised is a question to be decided.

The plaintiffs in all the three suits are different. Though the defence set up by the defendants in all the three suits is one and the same and they are pending on the file of three different Courts, the Court cannot normally exercise power under Section 24 of

C.P.C. to withdraw those cases and transfer them to some other Court.

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 (vide **“Dr.Reddy’s Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others¹”**

In **“Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others²”**, 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.”

¹ 2004 (4) ALD page 719

² 2008 (3) Supreme Court Cases Page 659

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 “**Ruchi Ram Khattar v. Sarah Narsain, Shah and another**”³, it was held that inconvenience to the defendant is not a ground to withdraw and transfer any suit. The principle, however, is well established that it is the right of the plaintiff to choose the forum for his action and that in deciding whether the plaintiff should be deprived of that right a very strong case must be made out by the defendant, and further that in deciding whether a suit should or should not be transferred it is not merely the

³ AIR 1928 Lah 159

convenience of the defendant that has to be considered, but the plaintiff's convenience also should be borne in mind.

The Apex Court in “**Indian Overseas Bank, Madras v. Chemical Construction Company and other⁴**” laid down certain principles at para 16, which read as follows:

“The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.”

The same view is expressed in “**Tiruvenkitan v. Anantha Kumar⁵**” while observing that mere inconvenience pointed out by the Defendant would not be sufficient to deprive the plaintiff of his choice of forum. The well accepted principle of law is that transfer of a suit is affected by the Court for proper and convincing grounds. No Court would grant transfer for mere asking by a party. If these principles are applied to the present facts of the case, the Court has to weigh the inconvenience being caused to the plaintiff and the defendant, in case of continuing the proceedings or transferring the proceedings from one Court to another.

In the present case, the ground urged before this Court is that the petitioners are residing at Repalle and all the three suits are pending before three different Courts and to avoid conflicting

⁴ (1979) 4 Supreme Court Cases 358

⁵ ILR 1991 (1) Kerala 565

judgments, they sought withdrawal of suits pending in Senior Civil Judge Court, Medchal and Markapur and transfer them to the Senior Civil Judge Court, Repalle, but this ground would not fall in any of the guidelines stated above. Hence, I am unable to exercise power under Section 24 of C.P.C. to withdraw the suits pending in Senior Civil Judge Court, Medchal and Markapur and transfer them to the Senior Civil Judge Court, Repalle. Consequently, the petitions are liable to be dismissed.

In the result, the petitions are dismissed.

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

08.11.2018
Ksp

JUSTICE M. SATYANARAYANA MURTHY

