

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION NO.618 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw O.P.No.190 of 2013 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to the Judge, Family Court, City Civil Court, Hyderabad to try along with O.P.No.989 of 2016 pending on the file of Judge, Family Court, City Civil Court, Hyderabad.

Petitioner is the husband and respondent is the wife. Both petitioner and respondent filed two petitions, one for divorce by husband, under Section 13(1)(i-a) of Hindu Marriage Act, 1955 (the Act), and other by wife under Section 9 of the Act for Restitution of Conjugal Rights, which are pending before two different Courts, one before Judge, Family Court, Ranga Reddy District and other before Judge, Family Court, City Civil Court, Hyderabad.

Petitioner is the resident of Attapur, Hyderguda, Ranga Reddy District, and the respondent is presently residing at Old CIB quarters, Khairtabad, Hyderabad and the Court at Ranga Reddy District is far away to the respondent but the petitioner is ready to appear before any Court and requested this Court to withdraw and transfer, O.P.No.190 of 2013 pending on the file of the Court of Judge, Family Court, Ranga Reddy District to the Judge, Family Court, City Civil Court, Hyderabad to avoid multiplicity of orders.

Respondent appeared through her counsel, Sri G.Karan Singh, but filed no counter.

During hearing, learned counsel for the petitioner reiterated the contentions and no argument is advanced by the counsel for the respondent.

Petitioner filed divorce petition in O.P.No.190 of 2013 to dissolve the marriage by granting a decree of divorce on the ground of cruelty which is pending before the Judge, Family Court, Ranga Reddy District. Whereas the respondent alleged that the petitioner deserted her without any reasonable cause and filed a petition under Section 9 of the Act for restitution of conjugal rights. If both the matters are tried by two different Courts, there is possibility of conflicting orders, and to avoid conflicting orders in two different petitions between the same parties, it is appropriate to withdraw any one of the petitions and transfer the same to other Court. However, since the City Civil Court, Hyderabad is nearer to both the parties, I deem it appropriate to withdraw O.P.No.190 of 2013 pending on the file of Judge, Family Court, Ranga Reddy District filed for divorce, under Section 13(1)(i-a) of the Act, and transfer the same to the Judge, Family Court, City Civil Court, Hyderabad, to decide both the petitions in accordance with law to avoid multiplicity of proceedings.

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**¹, 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;
- (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.”

¹ 2008 (3) Supreme Court Cases Page 659

The Apex Court in **Kulwinder Kaur** laid down certain guidelines to exercise such power under Section 24 of CPC when it is inconvenient for the parties, the Court can exercise its inherent jurisdiction and withdraw the pending suit or proceeding before one Court and transfer the same to any other competent Court. Hence to avoid unnecessary inconvenience to both parties and conflicting judgments, I find it is a fit case to order this petition.

Petitioner also sought a direction to try both the O.Ps. together. But, such direction cannot be given by this Court while exercising power under Section 24 CPC.

In **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**², it was held as follows:

“Under Section 24(2) of C.P.C., special direction may be issued by the Court ordering the transfer either to order the trial denovo or to proceed with the suit from the point at which it was transferred or withdrawn. For whatever reasons convenience or otherwise the order of transfer made under section 24(2) of CPC it does not empower the court or contemplate any directions being given for the joint trial of the transferred suit. So, any violation or contravention of that order of transfer and the separate trial of the transferred suit do not render the proceedings invalid.”

By applying the principle laid down in the above judgment and nature of jurisdiction, I find that it is not a fit case to issue such direction, it is beyond the scope of Section 24 of C.P.C. and if any such direction is issued for clubbing both the matters, it is nothing but exceeding or transgressing the powers conferred on this Court by Section 24 of C.P.C.

² AIR 1958 (A.P.) 218

Hence, I am unable to accede to the request of the petitioner for clubbing both the O.Ps. together. Leaving it open to the Court to decide whether it is proper to try two petitions together or separately by exercising discretion. In view of my findings in the earlier paras, I find no force in the contention raised by the counsel for petitioner.

In the result, Transfer CMP is allowed in part, O.P.No.190 of 2013 pending on the file of Judge, Family Court, Ranga Reddy District, is withdrawn and transferred to the Judge, Family Court, City Civil Court, Hyderabad, and the same shall be disposed of in accordance with law. However, it is left open to the Trial Court to decide whether it is required to try both the petitions together or separately by exercising discretion.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

Date:31.01.2018
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