

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P. No.495 OF 2017

ORDER:

The present Transfer C.M.P., under Section 24 of the Code of Civil Procedure, 1908 (for short 'Code'), is filed by the petitioner - defendant to withdraw O.S. No.100 of 2017 from the file of Principal Senior Civil Judge, Anakapalli, Visakhapatnam District, and transfer the same to the Principal Senior Civil Judge, Vijayawada, Krishna District.

2. The present Transfer CMP is filed by the petitioner alleging that the respondents herein filed O.S. No.100 of 2017 in collusion with one Koppolu Satyanarayana, who is his co-employee of VTPS and one I. Venkateswara Rao filed a civil suit O.S. No.2307 of 2002 on the file of the III Additional Junior Civil Judge at Vijayawada. Subsequently, E.P. No.223 of 2006 was filed against him after referring the case as pre-litigation case at Vijayawada and settled in P.L.C. At that time, Koppolu Satyanarayana and I. Venkateswara Rao, both did not return the blank signed promissory notes to him. After lapse of several years, the said two persons colluded and created a false claim, and filed suit in collusion with the respondents herein, who are not known to him. He also contended that he never borrowed any amount from any one of the parties to the petition.

i) The connected suit was already disposed of by the learned III Additional Junior Civil Judge i.e. O.S. No.2307 of 2002 and E.P.

No.223 of 2006. The total amount of below one lakh was already cleared and the respondents are not having any *locus standi* to file a civil suit at Anakapalli.

ii) It is the specific contention of the petitioner that Vijayawada police received a written complaint from him and the respondents issued a legal notice to the petitioner through one R.D. Prasad, a practicing advocate at Anakapalli without verifying the facts and in collusion with gangsters, they filed suit O.S.100 of 2017 on the file of the Senior Civil Judge at Anakapalli without following due process of law and without application of mind, mentioned the identity card number of the petitioner in the promissory note and, thus, created such document.

iii) The petitioner is permanent resident of VTPS, Vijayawada and his co-employee Koppolu Satyanarayana was having transactions with him only. The respondents herein are no way connected with the petitioner herein and, hence, requested to withdraw the said O.S. No.100 of 2017 from the file of the Principal Senior Civil Judge, Anakapalli of Visakhapatnam District and transfer the same to the Principal Senior Civil Judge at Vijayawada.

3. At the stage of admission, learned counsel for the petitioner reiterated the contentions raised in the petition and requested to withdraw the said O.S. No.100 of 2017 and transfer the same to the Court at Vijayawada, mainly on the ground that there are number of

suits pending before the Courts at Vijayawada, and the petitioner is resident of Vijayawada and, therefore, sought for withdrawal of the suit and transfer the same to the Court at Vijayawada.

4. On scanning the allegations made in the petition, only ground I could find in the petition is that the petitioner is permanent resident of Vijayawada working as an employee in VTPS and sought for withdrawal of the suit. But, copies of legal notice and reply notice filed along with petition are sufficient to conclude that there was registered correspondence between the petitioner and the respondents regarding payment of amount due under promissory note, dated 15.06.2015, which is a document sued upon in O.S. No.100 of 2017. The recitals of the document show that promissory note was executed at a place within jurisdictional limits of Anakapalli Court and, therefore, filing a suit at Anakapalli Court is in accordance with law. But, the ground urged before this Court is totally different that the petitioner is residing at Vijayawada, merely because the petitioner is residing at Vijayawada within the jurisdictional limits of Vijayawada, the suit cannot be withdrawn from the Court at Anakapalli and transferred the same to a Court at Vijayawada.

5. In **Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and others**¹, the Supreme Court held as follows:

¹ 2008 (3) SCC 659

“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.

6. In view of the guidelines extracted herein above, the cause shown by the petitioner that he is working in VTPS within the local limits of Vijayawada is not a ground to exercise power under Section 24 of the Code to withdraw O.S. No.100 of 2017 pending on the file of Principal Senior Civil Judge at Anakapalli and transfer the same to the Principal Senior Civil Judge at Vijayawada.

7. The other allegations made in the petition are totally irrelevant for the purpose of deciding the petition under Section 24 of the Code.

8. 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 as held by this Court in **Dr.Reddy’s Laboratories Ltd., Hyderabad v. Pulletikurhti Varaha Chandra Bose and others**².

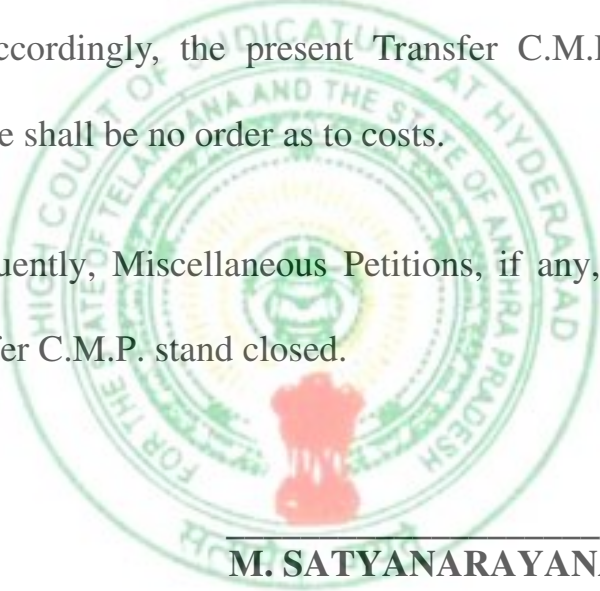
9. In view of the law declared by the Apex Court, convenience or inconvenience of any of the parties alone is not a ground and the Court has to weigh the inconvenience caused to both parties and

² 2004 (4) ALD page 719

exercise such power under Section 24 of the Code in view of the law laid down in **Ruchi Ram Khattar v. Sarah Narsain Shah**³, **Indian Overseas Bank, Madras v. Chemical Construction Company**⁴ and **Tiruvenkitan v. Anantha Kumar**⁵ and in view of the law declared by the Apex court and this Court referred supra, the ground urged before this Court in the present petition is not sufficient to exercise power under Section 24 of the Code. Hence, the present petition is liable to be dismissed.

10. Accordingly, the present Transfer C.M.P. is dismissed. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present Transfer C.M.P. stand closed.



M. SATYANARAYANA MURTHY, J

November 02, 2018

Mgr

³ AIR 1928 Lah 159

⁴ (1979) 4 Supreme Court Cases 358

⁵ ILR 1991 (1) Kerala 565