

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

TRANSFER CIVIL MISCELLANEOUS PETITION No.819 of 2017

ORDER:

Petitioner is the first defendant in O.S.No.425 of 2017 on the file of the Principal District Judge, Visakhapatnam. She seeks transfer of that case on the plea that the said Court does not have jurisdiction.

2. Hearing the learned counsel for the petitioner and the learned counsel for the contesting respondent/plaintiff on the strength of the averments in this petition and the pleadings in the counter-affidavit of the first respondent, it is to be noted that the plaintiff, as dominus litis, has chosen to sue in the Court at Visakhapatnam. The issue of territorial jurisdiction is a matter which has to be raised before that Court, if any of the defendants have any objection to the let in of the suit before that Court. This is not an issue under Section 24 CPC to be entertained.

3. Learned counsel for the petitioner referred to the decision of Patna High Court in **Meghraj Sanchialal v. Malpani Rice and Oil Mills**¹ to buttress the plea that part payment or such other matters are not decisive in relation to the locus to sue. The decision relating to the Negotiable Instruments Act, 1881 may or may not be different. The place of suing is not a matter, which

¹ 1974 LawSuit (Pat) 147

could be decisive in matters, where an application for transfer of case is sought under Section 24 CPC. The objection as to the territorial jurisdiction to a suit being tried by a Subordinate Court/Civil Court is not a matter to be justiciable at the first instance; or at all, against; through an application under Section 24 CPC. The eligibility of the trial Court to formulate such issues as may be required to be decided as between the parties in the civil suit and the power to decide certain issues provided those issues are only issues of law, are all matters within the domain of the trial Court. It would be a mode of lateral injection into the trial Court jurisdiction, if the transferring Courts exercising power under Section 24 CPC were to abdicate to itself the power to decide on the issue of territorial jurisdiction on the facts of any particular given case.

4. For the aforesaid reasons, I do not find any ground to transfer the suit as sought in this Transfer Civil Miscellaneous Petition.

5. The Transfer Civil Miscellaneous Petition fails and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 21.12.2018

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