

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.7079 OF 2017**

**ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 13.11.2017 in Tr.O.P.No.2411 of 2017 passed by the learned Chief Judge, City Civil Court, Hyderabad, filed for withdrawal of O.S.No.128 of 2007 pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transfer the same to any other competent Court of equivalent jurisdiction to try and dispose of the suit in accordance with law.

The petitioners are petitioners-defendant Nos.4 and 5, the first respondent herein is the first respondent-plaintiff and respondent Nos.2 to 28 are respondent Nos.2 to 28-defendant Nos.1 to 3 and 5 to 29 before the trial Court.

For the sake of convenience the parties will be hereinafter referred to as they were arrayed before the trial Court for convenience.

The petitioners filed a petition under Section 24 of C.P.C. to withdraw O.S.No.128 of 2007 pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transfer the same to any other competent Court alleging that the first respondent filed a suit for partition of the schedule properties against defendant Nos.1 to 6 initially, subsequently, respondent Nos.6 to 28, being the tenants, were impleaded as defendant Nos.7 to 29 in the suit at the instance of the first respondent. Despite the

order of the Court below to issue summons to respondent Nos.6 to 28, after their impleadment as defendants, the first respondent failed to take any steps to serve summons to them. The suit is coming up for evidence of the first respondent.

The Presiding Officer, after assuming charge as XII Additional Chief Judge, City Civil Court, Secunderabad, in the month of February, 2017 and for unknown reasons, the Presiding Officer became hostile towards the petitioners. Ultimately, a situation came where the petitioners lost confidence on the Presiding Officer and they strongly feel that justice will not be done to them on account of biased attitude of the Officer. The petitioners quoted certain incidents, which made them to lose confidence of the Court and they are extracted hereunder:

- “a) The court below passed an order dated 12.04.2016, directing the 1<sup>st</sup> Respondent/Plaintiff to issue notices to the Defendant Nos.7 to 29 (impleaded subsequently) through court and RP on payment of process. Despite giving several opportunities, the 1<sup>st</sup> Respondent/Plaintiff failed to deposit the process and till date no summons have been served on the impleading tenants i.e. Defendant Nos.7 to 29.
- b) Notwithstanding the failure of the 1<sup>st</sup> Respondent/Plaintiff to serve the summons on the Defendant Nos.7 to 29, the present Presiding Officer took up 2 Interlocutory Applications in I.A.Nos.792 of 2015 and 493 of 2015 filed by the 1<sup>st</sup> Respondent/Plaintiff seeking amendment of the plaint, even though the counsel for the Petitioners/D4 and D5 represented that summons have not been served on the Defendant Nos.7 to 29, posted the said petitions for orders on 03.07.2017, while endorsing on the docket that the other I.As are pending.
- c) However on 12.07.2017, the Presiding Officer allowed not only the said I.A.No.792 and 493 of 2015, but also

I.A.Nos.652 of 2016 and I.A.No.424 of 2015 filed by the 1<sup>st</sup> Respondent/Plaintiff were allowed on the same day thereby directing the Defendant Nos.7 to 29 to deposit monthly rents in the court in respect of Schedule A and B properties till the disposal of the suit and also directing the Petitioners/D4 and D5 to deposit lease renewal deposits allegedly collected from Defendant Nos.24, 26 and 29.

In this contest it is submitted that, no notice has been served in I.A.Nos.424 of 2015 on the Petitioners/D4 and D5 and both the said I.A.Nos.652 of 2016 and I.A.No.424 of 2015 were never heard, nor summons have been served on the tenants i.e., the Defendant Nos.7 to 29.

- d) The said orders in I.A.No.652 of 2016 and I.A.No.424 of 2015 have been passed giving such directions as referred above, even though the quantum of rents and alleged rent deposits, was ascertained and wholly ignoring that a connected petition in I.A.No.425 of 2017 filed by the 1<sup>st</sup> Respondent/Plaintiff seeking a direction to Defendant Nos.2 to 6 to possess the details of rents collected by them after filing of the suit and consequently to deposit the share of 1<sup>st</sup> Respondent/Plaintiff's share, is still pending.

Out of four orders passed in the said I.As, the petitioners herein challenged the orders passed in I.A.No.792 of 2015, 652 of 2016, and 424 of 2017 by way of revisions and appropriate orders have been passed by the Hon'ble High Court in two revisions.

- e) Even though an earlier order in CRP No.6492 of 2016 of the Hon'ble High Court to the affect that the impugned amendment carried out is subject to the result of the said revision, the Presiding Officer permitted the 1<sup>st</sup> Respondent/Plaintiff to file an amended plaint, pursuant to an order passed in I.A.No.792 of 2015. The memo filed by the Petitioners/D4 and D5 to strike off the amended portions of the amended plaint on the ground of pendency of the said revision, was rejected by the Presiding Officer by an order dated 07.09.2017 holding that nature of the suit shall not be changed by such amendment, even though said revision challenging the very amendment is pending.

- f) Pursuant to the allowing of I.A.No.792 of 2015, the 1<sup>st</sup> Respondent/Plaintiff paid a meager court fee of Rs.3000/- for the reliefs of cancellation of Gift Deeds, and the Presiding Officer accepted such meager court fee, despite an objection raised by the Petitioners/D4 and D5 by a memo.
- g) Time and again, the Presiding Officer made comments with the Petitioner/Defendant No.4 in the absence of their counsel to settle the disputes with the 1<sup>st</sup> Respondent/Plaintiff, notwithstanding the merits of the case, while intimidating the Petitioner/Defendant No.4 that he will pass an order directing the 1<sup>st</sup> Respondent/Plaintiff to collect the rents and give a meager amount of Rs.1,00,000/- to the Petitioners/D4 and D5.”

As the petitioners lost confidence and apprehending that they will not get justice in accordance with law, they sought for withdrawal of O.S.No.128 of 2007 pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transfer the same to any other competent Court.

The first respondent filed counter denying the allegations made in the petition.

During hearing, Sri P.Shiv Kumar, learned counsel appearing for the petitioners, reiterated the contentions urged in the grounds of revision petition. He brought to the notice of this Court the memo filed by the petitioners informing the irregularities committed by the first respondent. Despite the same, the Presiding Officer did not rectify such irregularities, hence requested this Court to withdraw O.S.No.128 of 2007 pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transfer the same to any other competent Court.

The learned counsel for the first respondent supported the order in all respects.

As seen from the material on record, the first respondent filed the suit for partition of schedule properties against defendant Nos.1 to 6 and after death of defendant No.1, the alleged tenants in occupation of the property were impleaded as defendant Nos.7 to 29, but no summons were served till date on the alleged tenants in occupation of the property despite the order dated 12.04.2016.

The petitioners narrated several circumstances, which give raise an apprehension in their mind that they would not get complete and fair justice if the suit is allowed to be tried by the learned XII Additional Chief Judge, City Civil Court, Secunderabad. The first circumstance is non-service of summons in the suit despite the order dated 12.04.2016. Though it is brought to the notice of learned XII Additional Chief Judge, City Civil Court, Secunderabad, he did not insist the first respondent to serve summons on respondent Nos.6 to 28, but proceeding with the suit. Such attitude certainly creates a serious doubt on the fair trial process.

The second ground that raised before this Court is that passing an order in I.A.No.424 of 2015 in O.S.No.128 of 2007 directing respondent Nos.6 to 28 to deposit monthly rents though summons were not served on them, which creates doubt in the mind of the petitioners. Permitting the first respondent to carryout a consequential amendment after condoning delay though no petition was filed either under Order I Rule 10 of C.P.C., Order VI Rule 17 of C.P.C. or under Order XXII Rules 2, 4, 9 and 10 of

C.P.C. to add as many as 20 paras without any application under the above provisions. The hasty decisions taken by the Presiding Officer from time to time is suffice to conclude that he has committed as many irregularities as possible in the trial process. Since the suit is of the year 2007 and directions were issued by the High Court for disposal of Pre-2012 matters in the name of expediency, the Presiding Officer is not supposed to commit such serious irregularities, which vitiates the trial process and creates any amount of suspicion in the mind of the parties and by passing such cryptic orders in the name of expediency, the quality of judgment cannot be sacrificed and the Court is expected to advert every contention and answer with some seriousness it deserves. As there is a direction from the High Court to dispose of Pre-2012 matters, the Court cannot dispense with the procedural formalities and proceed with the trial even without serving summons on the alleged tenants, who were impleaded as defendant Nos.7 to 29, which is a grave irregularity, and it ultimately vitiates the entire trial even if any decree is passed. Therefore, the apprehension of the petitioners is supported by various illegalities committed by the Presiding Officer of the Court while passing orders in various interlocutory applications for one reason or the other. When the apprehension is based on certain instances, the Court can exercise power under Section 24 of C.P.C. and pass appropriate order under Section 24 of C.P.C., which is purely discretionary in nature.

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**<sup>1</sup>, the Supreme Court held that Section 24 CPC confers comprehensive power on the

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<sup>1</sup> 2008 (3) Supreme Court Cases Page 659

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.”

One of the grounds raised in the petition is covered by guideline No.iv referred to above. In a later judgment in **Usmangani Adambhai Vahora Vs. State of Gujarat and another**<sup>2</sup>, the Apex Court considered the ground invented by parties that they would not get justice in the Court for seeking transfer of pending criminal case before one Court and transfer the same to other Court exercising power under Section 406 of Cr.P.C. The law is one and the same for withdrawal and transfer based on apprehension that the party would not get justice in the Court. The Apex Court in the above judgment adverted to the principles laid down in **Gurcharan Dass Chadha Vs. State of Rajasthan**<sup>3</sup>, wherein it was held as follows:

"... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the

<sup>2</sup> S.L.P. (Criminal) Nos. 9374-9375 of 2015

<sup>3</sup> AIR 1966 SC 1418

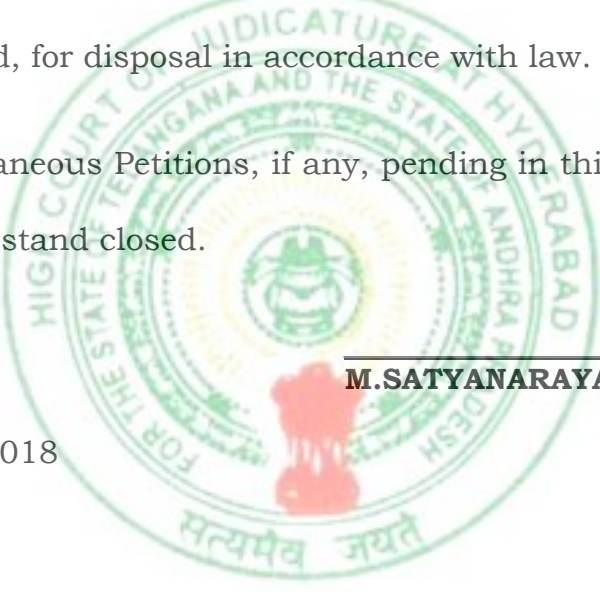
apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

When the tenants were impleaded as defendant Nos.7 to 29, summons in the suit have to be served to them, they may contest or not. If anyone of them contests, an opportunity has to be given to the impleaded defendants to file their written statement and after filing written statement, the Court has to frame necessary issues and thereafter proceed with the trial. Instead of following such procedure, in utmost hasty manner, the Presiding Officer proceeding with the trial and the suit was posted for evidence of the plaintiff-first respondent herein. If such hasty procedure is allowed to be adopted by the Officer, certainly it is difficult to get fair justice in the Court of law and therefore, the apprehension is supported by material. The facts and various instances narrated in the transfer petition, supported by the orders, which are subject matter of C.R.P.Nos.6492 of 2016, 4004 of 2017, 4005 of 2017, 4019 of 2017 and C.R.P.No.7079 of 2017, clinchingly establishes that the Presiding Officer of the Court committed as many irregularities as possible in the name of expediency and such irregularities ultimately vitiates the entire trial. The learned Chief Judge, City Civil Court, Hyderabad, while deciding transfer O.P. did not consider various irregularities pointed out by the learned counsel for the petitioners and committed an error in dismissing the transfer O.P. As the Court below did not exercise its discretionary jurisdiction that conferred on it, this Court can interfere with such an order under Article 227 of the Constitution of India. Therefore, by exercising power under Section 24 of C.P.C., I find that it is a fit case to withdraw O.S.No.128 of 2007

pending on the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transfer the same to the file of I Additional Chief Judge, City Civil Court, Secunderabad, to decide the suit in accordance with law.

Accordingly, the Civil Revision Petition is allowed setting aside the order dated 13.11.2017 in Tr.O.P.No.2411 of 2017 passed by the learned Chief Judge, City Civil Court, Hyderabad, and consequently, O.S.No.128 of 2007 is withdrawn from the file of XII Additional Chief Judge, City Civil Court, Secunderabad, and transferred to the file of I Additional Chief Judge, City Civil Court, Secunderabad, for disposal in accordance with law.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.



**M.SATYANARAYANA MURTHY, J**

Date: 23.02.2018  
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