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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.281 of 2019
and
C.M.P. No.8165 of 2019

A.Maruthachalam

... Petitioner

-vs-

C.Arangasamy

... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer the case in O.S.No.292 of 2019 from the file of learned Sub Court, II ASJ, Coimbatore, District to the file of Subordinate Court, Ootacamund or Coonoor, Nilgiris District.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.K.Govi Ganesan.

O R D E R

The above Tr.C.M.P., has been filed by A.Maruthachalam praying to withdraw and transfer the case in O.S.No.292 of 2019 from the file of learned Sub Court, II ASJ, Coimbatore, District to the file of learned Subordinate Court, Ootacamund or Coonoor, Nilgiris District, for expeditious disposal of the same.

2. The learned counsel appearing for the Petitioner would submit that a civil suit in O.S.No.292 of 2019 filed by the respondent on the ground that the Petitioner/defendant having borrowed a sum of Rs.7,00,000/- by way of cash as hand loan on 07.10.2018 to meet out his family necessities with a promise to repay the same within 2 months time; the Petitioner in order to discharge the above said liability, issued a cheque bearing No.238746 dated 07.12.2018, which is drawn on Canara Bank, Ootacamund Branch in favour of the respondent/Plaintiff, but when the cheque was deposited, it was returned dishonoured. After receiving summons from the learned trial court, the petitioner immediately lodged a police complaint and he has been



called for enquiry on 09.03.2019. It is the averment of the Petitioner that the respondent/plaintiff had put forged signature and no further enquiry is conducted thereafter. Therefore, the petitioner has given written complaint to the bank on 09.05.2018 and again reminder letter was sent on 15.02.2019 to know the status of the previous complaint given by the petitioner and thereafter, again the petitioner has given written complaint to the concerned bank to stop the cheque transaction and the same has been filed as document. It is further stated that the petitioner is aged 76 years and he is unable to travel more than 160 kilometers from his place to Coimbatore and the petitioner is taking treatment for his age related illness and that the doctor has also advised him not to take long travel. He also filed medical documents showing that he is unable to undertake long journey.

3. One of the grounds raised in Paragraph 14 of the affidavit filed in support of Tr.CMP., shows that the learned Sub Court II ASJ, Coimbatore, does not have jurisdiction. But the cheque allegedly given by the Petitioner/defendant bearing No.238746 dated 07.12.2018, is drawn on Canara Bank, Ootacamund Branch in favour of the respondent/plaintiff, and when the said cheque was deposited by the respondent/plaintiff in Indian Overseas Bank, Ganapathy Branch, Coimbatore, on 07.01.2019, the said cheque was dishonoured with the note "Funds Insufficient" by the banker on 08.01.2019. Therefore, part of cause of action has arisen in Coimbatore. Moreover, the Petitioner claims that he is 73 years old, hence, unable to take long journey of 100 kilometers from Udagamandalam to Coimbatore. Once the Plaintiff/respondent herein is also aged about 63 years, the age of the parties cannot be taken as a basis for transfer. In addition there to, Udagamandalam is a cold and hilly region, therefore, it is very difficult for anyone to undertake travel.

4. On the other hand, it will be convenient for the petitioner/defendant to go down to Coimbatore to conduct the case. Lastly as mentioned above, a part of the cause of action has arisen in Coimbatore, since the cheque given by the Petitioner was returned dishonoured with the note "Funds Insufficient" by the banker Indian Overseas Bank, Ganapathy Branch, Coimbatore, by bankers memo dated 08.01.2019. As such, part of the cause of action arises in Coimbatore. Hence, the suit is maintainable. The plea taken by the Petitioner that the suit has no jurisdiction in Coimbatore, is rejected.

5. Even though the Petitioner stated that he has filed a complaint to the Bank on 09.05.2018, the same has not been enclosed in the typed set of papers. Further, if the Petitioner is able to succeed before the authority, where he made a complaint, that can be made use of before the learned trial



court. Therefore, this court finds no merit in the Tr.CMP. Accordingly, the Tr.CMP. is dismissed. No costs. Consequently, connected CMP is closed.

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Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The learned Sub Judge, Subordinate Court,
II ASJ, Coimbatore.

2.The learned Sub Judge,
Subordinate Court,
Ootacamund or Coonoor,
Nilgiris District.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.47159

Tr. C.M.P. No.281 of 2019

RR(CO)

RRS (09/08/2019)