

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.272 of 2019

ORDER:

Heard Sri Shaik Khalid, learned counsel for the petitioner and
Sri P.Badri Premnath, learned counsel for the respondent.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.21-12-2018 in Transfer O.P.No.2708 of 2018 of the Chief Judge, City Civil Court, Hyderabad.

3. The said transfer O.P. was filed under Section 24 of the CPC before the Chief Judge, City Civil Court, Hyderabad by the petitioner seeking transfer of O.S.No.69 of 2017 pending before the III Additional Chief Judge, City Civil Court, Hyderabad.

4. In the affidavit filed in support of the said application, it was contended that the suit was based on false and frivolous grounds, that the respondent managed to see that the summons in the suit got returned as if the petitioner had vacated the premises long back; and the III Additional Chief Judge had set the petitioner *ex parte* on 28-04-2017 without correctly verifying whether the procedure was followed in the service of summons; that issues were not properly framed and additional issues require to be framed which the said Court had not done; that the respondent had filed I.A.No.1582 of 2017 invoking Order 15-A CPC seeking deposit of arrears of rent Rs.1,03,75,334/- to which petitioner had filed counter but orders were passed on 24-09-2018 by the

Court below directing the petitioner to deposit arrears of rent of Rs.58,75,000/- up to 31-08-2018; that petitioner questioned the same in C.R.P.No.6356 of 2018 which was allowed on 23-11-2018 and the case was remanded for considering the receipts filed by the petitioner and to consider their genuineness; and that these actions of the III Additional Chief Judge shows that the said Court is prejudiced against him; and so the suit shall be transferred from the said Court to the Chief Judge, City Civil Court, Hyderabad.

5. Counter affidavit was filed by the respondent opposing this application stating that the allegations made therein frivolous and not maintainable. It is contended that procedure under Order 5 CPC was followed and the petitioner was not correct in alleging that the Process Server returned the summons on the ground that petitioner vacated the suit schedule property erroneously; that the petitioner had challenged the order passed under Order 15-A CPC in I.A.No.1582 of 2017 vide C.R.P.No.6356 of 2018 and the High Court had disposed of the Revision directing the Court below to look into the documents filed by the petitioner observing that till the genuineness of the receipts produced by the petitioner is gone into, the defence of the petitioner cannot be struck off. It is contended that the petitioner is intentionally opposing the legal process with a dishonest intention to avoid payment of arrears of rent by delay tactics.

6. By order dt.21-12-2018, the Court below dismissed Tr.O.P.No.2708 of 2018. It noted that the grievance of the petitioner that

it would not get fair trial before the III Additional Chief Judge, City Civil Court, Hyderabad, and that was why he was seeking transfer of the suit. It however held that it was the duty of the petitioner to inform to the Registrar of Companies regarding change of address, but petitioner did not do so; petitioner always has a liberty to either seek amendment of issues or seek framing of additional issues; and on that ground, he cannot seek transfer of the suit. It also held that the order passed in I.A.No.1582 of 2017 was set aside and matter was remanded by the High court in the CRP to the trial court and petitioner ought to represent the matter before the said Court. It observed that there are no allegations of corruption leveled against the petitioner; so the petitioner cannot get the suit transferred; and it appears that the intention of the petitioner is to avoid the particular Court and there were no valid grounds to transfer the suit.

7. Assailing the same, this Revision Petition is filed.

8. Learned counsel for the petitioner stated that evidence on record till date indicates that the III Additional Chief Judge, City Civil Court, Hyderabad, is prejudiced against the petitioner since the petitioner was set *ex parte* even without verifying whether requirements of Order 5 CPC were complied with or not; that issues were not properly framed by the said Court and it was insisting that the matter should go to trial; and it had erroneously passed orders in I.A.No.1582 of 2017 filed by the respondent under Order 15-A CPC. He stated that it was the reasonable apprehension of the petitioner that he would not get justice in the trial Court. He also placed reliance on **Kulwinder Kaur @ Kulwinder**

Gurcharan Singh Vs. Kandi Friends Education Trust and others¹
and Ramrameshwari Devi and others Vs. Nirmala Devi and others².

9. Learned counsel for the respondent refuted the said contentions and supported the order passed by the Court below. He also specifically contended that the learned Judge who set the petitioner *ex parte* was different from the Judge who passed orders in I.A.No.1582 of 2017 filed by the respondent under Order 15-A CPC; and petitioner was trying to mislead the Court by saying that it was the same Judge who set the petitioner *ex parte* and also to pass the orders under order 15-A CPC. He also contended that unfounded allegations about bias towards respondent have been made against the Court below and transfer of the suit cannot be made on such frivolous grounds.

10. In **Kulwinder Kaur @ Kulwinder Gurcharan Singh** (1 supra), the Supreme Court observed:

“14. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket 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. Reading Sections [24](#) and [25](#) of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the

¹ AIR 2008 S.C. 1333

² 2011 AIR SCW 4000

*litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the **power**, but the **duty** of the Court to make such order."*

11. In **Ramrameshwari Devi and others** (2 supra), it was mentioned that care and attention is required to be bestowed by judicial officer at the time of framing of issues and issues cannot be framed mechanically in a suit.

12. Learned counsel for the petitioner did not deny that the officer who set the petitioner *ex parte* was different from the officer who passed the order under Order 15-A CPC.

13. If it was a different officer who set the petitioner *ex parte* from the present officer who passed order under Order 15-A CPC, the petitioner cannot allege bias to the present officer for setting the petitioner *ex parte* when the said officer was not the III Additional Chief Judge at that time.

14. Also as per the trial court petitioner was set ex-parte because it did not inform about the change of its address to the Registrar of Companies when it shifted from the address shown in the plaint and so

summons were sent to the old address and were returned stating that petitioner had vacated the premises long back. The High Court had anyway set aside on 23-11-2018 in CRP 6356 of 2018, the order dt.24.9.2018 in I.A.No.1582 of 2018 and said order is not subsisting.

15.The petitioner appears to be forum hunting and he cannot be allowed to seek transfer of the suit pending before the III Additional Chief Judge, City Civil Court, in the facts and circumstances of the case.

16.Therefore, I do not find any merit in the Revision Petition. It is accordingly dismissed. No costs.

17.As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-02-2018
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