



Tr.CMP No.205 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Tr.CMP No.205 of 2024 and
CMP No.3932 of 2024

- 1 . C.S.Venkataramanan
- 2 . V.Anuradha
- 3 . V.Saranya
- 4 . V.Nandita

... Petitioners

Vs.

C.Narayana Nair

... Respondent

Prayer: Transfer civil miscellaneous petition filed under Section 24 of CPC to withdraw the case in O.S.No.2937/2023 from the file of XXIII Additional Judge, City Civil Court, Chennai and transfer to any other Additional City Civil Court, Chennai.

For Petitioners : Mr.G.Muthuarasu

ORDER

This Transfer civil miscellaneous petition has been filed to to withdraw the case in O.S.No.2937/2023 from the file of XXIII Additional Judge, City Civil Court, Chennai and transfer to any other Additional City



Tr.CMP No.205 of 2024

Civil Court, Chennai.

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2. The petitioners herein are the defendants and the respondent herein is the plaintiff in the above said suit. According to the petitioners, on the side of the defendants, DW1 was examined and Ex.B1 to Ex.B4 were marked and the case was posted to 22.01.2024 for further evidence on defendants' side. On that day, the petitioners filed I.A.No.2 & 3/2024 to produce additional documents and the same were allowed on 06.02.2024, since the counsel for the plaintiff has made an endorsement, as no objection, as directed by the presiding officer, and the case was posted to 12.02.2024. On 12.02.2024, since the husband of the DW1 was admitted in the hospital, the counsel for the petitioners sought time, but the Trial Judge has not granted time and closed the defendants side evidence. On the same day, the plaintiff counsel argued the matter and the case was posted to the defendants' side argument for next day. On 13.02.2024, the counsel for the petitioners filed a petition in I.A.No.4/2024 to reopen the defendants side evidence. However, without any notice and filing counter by respondent/plaintiff, the Judge has allowed the the petition on condition that the petitioners have to pay cost of Rs.3,000/- to the respondent/plaintiff on or before 19.02.2024 and also the DW1 has to appear before the Court on 20.02.2024 for cross examination, failing which the petition would stand automatically dismissed and the above petition was



Tr.CMP No.205 of 2024

posted to 20.02.2024 for reporting compliance. It is the contention of the petitioners that, though the petitioner asked time for bonafide reason, the trial court has not granted sufficient time. Hence the petitioner is not satisfied to contest the Trial before the above Trial Judge and hence, this transfer petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. Admittedly, the petitioners herein are the defendants in the above said suit and on their side, the third defendant was examined as DW1. The applications in I.A.No.2 and 3 of 2023 seeking to file additional documents were allowed by the Trial Court. However, since the petitioners sought time for adducing evidence, in view of the fact that the husband of the DW1 was in hospital, the Trial Court has not granted time and closed the defendants' side evidence. After hearing the plaintiff side argument, the case was posted to 13.02.2024 for defendant side argument. On that day, again the petitioners filed I.A.No.4/2023 to reopen the defendants side evidence, and it was also allowed on payment of costs as stated supra. In such circumstances, without complying with the condition order, as directed by the Trial Judge, the



Tr.CMP No.205 of 2024

petitioners have come before this Court to transfer the suit.

5. The power of transfer must be exercised with the extreme caution and circumspection and in the interest of justice. The approach of the court should be pragmatic, not theoretical and the totality of facts and circumstances should be considered. In this case, the only contention of the petitioners is that, the Trial Judge has not granted sufficient time to record their evidence and hence, they have not satisfied to contest the case before him. The allegation of bias, prejudice or partiality, levelled against the presiding officer cannot be taken lightly, without any material. The allegation of apprehension against the fair trial, without furnishing particulars cannot be entertained. It does not meet the parameter laid down by the ***Hon'ble Supreme Court in AIR 1979 SC 468 in Menaka Sanjay Gandhi and another, Vs. Rani Jethmalaji.*** Therefore, I find no merit to transfer the case, as sought for by the petitioner and hence, the civil revision petition is liable to be dismissed.

6. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

Index:Yes/No
Internet:Yes/No
mst



Tr.CMP No.205 of 2024

To
WEB COPY The XXIII Additional Judge, City Civil Court, Chennai.



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Tr.CMP No.205 of 2024

V.SIVAGNANAM, J.

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Tr.CMP No.205 of 2024

23.02.2024