

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

THURSDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

HONOURABLE SRI JUSTICE B SYAMSUNDER



TRANSFER CIVIL MISCELLANEOUS PETITION No. 298 of 2023

Between:

1. K. Rajendra Prasad, S/o Sundararamiah, Aged 55 years, R/o No. 31-14-13, Danaiah Street, Machavaram, Vijayawada.
2. Paspuleti Rama Rao, S/o Pullaiah, aged about 44 years, R/o D.No.74-12/5-3/8, Near NTR Colony, Patamata, Vijayawada.

...Petitioners/Appellants

AND

1. M/s Sakthi Finance Ltd., Represented by its Authorized Signatory, No.62, Nanjappa Road, Coimbatore.

...Respondent/Claimant

2. M. Tanga Raju (Arbitrator). D. No. 62, Nanjappa Road, Coimbatore.

...Respondent/Arbitrator

Petition Under Section 24 of the C.P.C. Praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass orders by withdraw the Petition in A.O.P No.199 /2018 filed before Hon'ble V Additional District Judge at Vijayawada and same may be transferred to the Court of the XIII Additional District Judge at Vijayawada.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in A.O.P No.199 /2018 filed before Hon'ble V Additional District Judge at Vijayawada, pending disposal of the above transfer petition.

Counsel for the Petitioner : Sri D S N V Prasad Babu

Counsel for the Respondent No.1 : Sri Maheswara Rao Kuncheam

The Court made the following:

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

TRANSFER CIVIL MISCELLANEOUS PETITION

No.298 of 2023

ORDER:

I have heard learned Counsel for the petitioner Mr.D.S.N.V.Prasad Babu as well as learned Counsel for the 1st respondent Mr.Maheswara Rao Kuncheam.

2. This Transfer Civil Miscellaneous Petition is filed by the petitioners under Section 24 of the Code of Civil Procedure (in short "CPC"), seeking transfer of AOP.No.199 of 2018 on the file of V Additional District Judge's Court, Vijayawada to XIII Additional District Judge's Court, Vijayawada.

3. The case of the petitioners in brief is that the 1st respondent filed two cases, vide Arbitration Case Nos.178 of 2016 and 179 of 2016 before the 2nd respondent herein at Coimbatore for realization of alleged due amounts from the 1st petitioner, wherein the 2nd respondent passed Awards in two Arbitration cases, and then the petitioners have challenged those Arbitration

Awards by filing two cases before the Principal District Court, Krishna at Machilipatnam, and then AOP No.199 of 2018 is made over to V Additional District Judge's Court, Vijayawada and Arbitration Case No.285 of 2018 is made over to XIII Additional District Judge's Court, Vijayawada. The 1st petitioner submits that in AOP No.199 of 2018, he filed Interlocutory Application under Order 41, Rule 27 of CPC for receiving additional document, and said application was allowed by the V Additional District Judge, Vijayawada, *vide* Orders dated 15.09.2022, but without looking into those documents, the learned V Additional District Judge, Vijayawada dismissed AOP No.199 of 2018. Then the petitioners preferred CMA No.149 of 2023 challenging the Dismissal Order in AOP No.199 of 2018. Then the Hon'ble Division Bench of this Court allowed the Civil Miscellaneous Appeal filed by the petitioners, remanded the matter to the Lower Court directing the V Additional District Judge, Vijayawada to hear the matter afresh and dispose of the matter on merits. It is also the contention of the 1st petitioner that

in the meanwhile the 1st respondent filed Execution Petition in EP.No.151 of 2019 in Arbitration Case No.178 of 2016 before V Additional District Judge's Court, Vijayawada against himself and the 2nd petitioner for attachment of EP schedule property and its sale, wherein the petitioners have received notice in the month of July, 2022 and filed detailed counter, and the said matter was posted to 30.08.2023 for hearing. The 1st petitioner also submits that later he got knowledge through online the date was changed as 06.11.2023 reserved for Orders without his knowledge and without hearing the matter. Then the 1st petitioner verified the Docket Order in the Office of V Additional District Judge's Court, Vijayawada and found that the date 30.08.2023 was strike off and posted the same on 06.11.2023 reserved for Orders. Then the 1st petitioner filed an application for certified copy of Docket Order, which was returned by the Court with an endorsement that "Docket Order cannot be put-up". It is the contention of the 1st petitioner that the 1st respondent suppressed the material facts before the

Arbitrator and committed material irregularities and got *Exparte* Awards and the learned V Additional District Judge, Vijayawada also without considering and discussing crucial and vital evidence, passed cursory Order, and he has good case to succeed. The 1st petitioner also stated that the Presiding Officer of V Additional District Court, Vijayawada not acted in judicial manner and the way in which the proceedings conducted in the case are very much apprehensive to the petitioners and they are apprehending that they may not get justice before the said Court and filed petition to transfer AOP No.199 of 2018 from V Additional District Judge's Court, Vijayawada to XIII Additional District Judge's Court, Vijayawada, where AOP No.285 of 2018 filed by them is pending, wherein their contention is similar. He prays to allow the petition.

4. The 1st respondent filed counter, denying the allegations made in the affidavit of the 1st petitioner. It is the contention of the 1st respondent that AOP No.178 of 2016 on the file of V Additional District Judge's Court,

Vijayawada is coming up for trial and posted to 14.11.2023 and clubbing of both cases may not just and essential and both cases are arising out of different cause of action. They further submit that Section 24 of CPC is not applicable to the Arbitration and Conciliation Act, 1996, more particularly in view of the A.P.Arbitration Rules, 2000 framed by this Court as per Section 12, which reads as under:

"(1) Save as otherwise expressly provided in the Act or these Rules the following provisions of the Code of Civil Procedure, 1908 (V of 1908) shall apply to the proceedings before a Court in so far as they may be applicable thereto; namely;

(i) Sections 28, 31, 35, 35A, 35B, 107, 133, 135, 144, 148A, 149, 151 and 152; and

(ii) Orders III, V, VI, IX, XIII to XIX, XXIV and XLI".

They further submit that as per Sections 5 and 19 of the Arbitration and Conciliation Act, 1996 also the judicial intervention in the Arbitration proceedings are limited. They pray to dismiss the petition.

5. The learned Counsel for the petitioners would submit that as documents filed by the petitioners as an additional evidence not considered by the learned V Additional District Judge, Vijayawada and dismissed AOP No.199 of 2018, the petitioners have preferred CMA No.149 of 2023, wherein the Hon'ble Division Bench of this Court remanded the matter for fresh consideration without expressing any opinion with regard to merits of the case. He would further submit that in spite of remand of the case, the 1st respondent is proceeding with EP No.151 of 2019 in Arbitration Case No.178 of 2016 on the file of V Additional District Judge's Court, Vijayawada, though AOP No.199 of 2018 is pending. It is the contention of the learned Counsel for the petitioners that the rules if any framed under A.P.Arbitration Rules, 2000 not having overriding effect on Section 24 of CPC, wherein it is clearly provided that suit or any proceeding can be transferred under Section 24 of CPC. He argued that the learned V Additional District Judge, Vijayawada not acted in judicial manner, who declined to supply the

certified copy of Docket Order on the application of the petitioners and returned the same, due to that the petitioners have got apprehension that they may not get justice in the said Court. He further argued that similar AOP No.285 of 2018 is pending on the file of XIII Additional District Judge's Court, Vijayawada and both cases have to be disposed of by the same Court to avoid conflicting Judgments if any. He prays to allow the petition.

6. The learned Counsel for the 1st respondent would submit that Section 24 of CPC is not applicable to the Arbitration cases, as applicability of 24 of CPC is limited as per Section 12 of A.P.Arbitration Rules, 2000. He would further submit that as per Sections 5 and 19 of the Arbitration and Conciliation Act, the judicial intervention in the Arbitration proceedings are limited, due to that petition filed by the petitioners under Section 24 of CPC is not maintainable. He prays to dismiss the petition.

7. Now the point that emerges for consideration of this Court is:-

"Whether there are grounds to transfer AOP No.199 of 2018 on the file of V Additional District Judge's Court, Vijayawada to XIII Additional District Judge's Court, Vijayawada to try simultaneously along with AOP No.285 of 2018?"

8. POINT:

Before going to the merits of the case, it would be beneficial to quote Section 24 of CPC, which reads as under:

"24. General power of transfer and withdrawal:-

- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-*
 - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or*
 - (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and*
 - (i) try or dispose of the same; or*
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.*
- (2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is*

thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purpose of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it¹.

9. The Hon'ble Apex Court in *Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust*², held as follows:

"Section 24 CPC confers comprehensive power on the 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

¹ (2008) 3 SCC 649

applicable to all situations, it cannot be gain said 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".

10. It is further held by the Hon'ble Supreme Court that following factors have to be taken into consideration in a situation, in which it is the duty of the Court to transfer the case.

- i) balance of convenience or inconvenience to the plaintiff or 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 interest in the litigation;*
- vi) *interest of justice demanding for transfer of suit, appeal or other proceeding, etc.*

11. The Hon'ble Apex Court observed that the above guidelines are illustrative, but not substantive guidelines. In the present case, it is not in dispute that the petitioners have filed two Arbitration cases under Section 34 of the Arbitration and Conciliation Act challenging the Awards passed by the 2nd respondent/Arbitrator on an application filed by the 1st respondent, vide Arbitration Awards Nos.178 of 2016 and 179 of 2016. It is also not in dispute that both cases, the parties and contention of both sides are similar, as the petitioners challenged the Awards on similar grounds and due to administrative reasons though the Arbitration cases are filed before the Principal District Court, Krishna at Machilipatnam, those were made over to two different Additional District Courts. The petitioners are seeking transfer of cases within the District. This Court has got concurrent jurisdiction to entertain the transfer petitions under

Section 24 of CPC. As per the *ratio* laid down by the Hon'ble Division Bench of this Court in ***Tadikona Surya Venkata Satyanarayana Murthy vs. Tammana Seethamahalakshmi and others in Tr.CMP Nos.704 and 705 of 2014, Order dated 21.06.2016***, wherein it is held at Para No.37, which reads as under:

*"37. Incidentally, we may also clarify that the general power of withdrawal and transfer is available to the High Court as well as the District Court concurrently as indicated by the Supreme Court in **Kulwinder Kaur v. Kandi Friends Education Trust (C.A.No.338 of 2008 dated 11-1-2008)**. Therefore, the availability of the power for the Principal District Court to transfer a case from the file of one Additional District Court to another, does not operate as a bar for the High Court to exercise the jurisdiction".*

12. A perusal of Section 24 of CPC, which makes it clear that a suit or proceeding may be transferred under this Section from a Court, which has no jurisdiction to try it. It is no doubt true that as per Rule 12 of A.P. Arbitration Rules, 2000 the provisions of the Code of Civil Procedure referred therein shall be applicable to Arbitration proceedings, but it doesn't mean that Section 24 of CPC,

which is Central enactment is not applicable to Arbitration cases. The provisions of Section 24 of CPC have got overriding effect on the rules framed under A.P. Arbitration Rules. Though, Section 5 of Arbitration and Conciliation Act shows that judicial intervention is limited, except where so provided in the acts, which is pertaining to the appreciation of contention of both sides on merits in the main case, which will not affect the powers of this Court under Section 24 of CPC when the situation and circumstances of the case warrants.

13. In the present case, admittedly at the first instance AOP No.199 of 2018 has been disposed of by the learned V Additional District Judge, Vijayawada, *vide* Orders dated 15.09.2022, which were challenged by the petitioners by filing CMA No.149 of 2023 before this Court, wherein the Hon'ble Division Bench of this Court remanded the matter to the trial Court for fresh consideration. It is the contention of the petitioners that in spite of remand of AOP No.199 of 2018 for fresh consideration, the learned V Additional District Judge,

Vijayawada is proceeding with enquiry in EP No.151 of 2019 in Arbitration Case No.178 of 2016, which Award challenged by the petitioners by filing AOP No.199 of 2018. Now, it is necessary to re-produce or recollect well recognized legal principle that *"justice not only be done, but it must also seems to be done"*.

14. Even otherwise, two Arbitration cases between the same parties, having similar contentions are pending in different Courts, due to that it is desirable to dispose of both cases by the same Court to avoid conflicting Judgments though cause of action in both cases are not similar. As per the *ratio* laid down by the Hon'ble Apex Court in Kulwinder Kaur case referred *supra*, the Point Nos.III, IV and VI are applicable to the facts of the present case. This Court is of an opinion that there are grounds of consider the request of the petitioners to transfer AOP.No.199 of 2018 on the file of V Additional District Judge's Court, Vijayawada to XIII Additional District Judge's Court, Vijayawada to try simultaneously along with AOP.No.285 of 2018, by following the

directions issued by the Hon'ble Division Bench of this Court in CMA No.149 of 2023, dated 14.09.2023.

15. In the result, this Transfer Civil Miscellaneous Petition is allowed. AOP.No.199 of 2018 on the file of V Additional District Judge's Court, Vijayawada is hereby withdrawn and transferred to XIII Additional District Judge's Court, Vijayawada to try simultaneously along with AOP.No.285 of 2018, by following the directions issued by the Hon'ble Division Bench of this Court in CMA No.149 of 2023, dated 14.09.2023. The learned V Additional District Judge, Vijayawada shall transmit the case records in AOP.No.199 of 2018 after duly indexed to XIII Additional District Judge's Court, Vijayawada as expeditiously as possible within a period of Two (02) weeks from the date of receipt of Orders of this Court in the present petition. No order as to costs. Consequently, miscellaneous petitions, if any, shall stand closed. Interim Stay if any, granted shall stand vacated.

**SD/- SHAIK MOHD. RAFI
ASSISTANT REGISTRAR**

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SECTION OFFICER

To

1. The V Additional District Judge at Vijayawada, Krishna District.
2. The XIII Additional District Judge at Vijayawada, Krishna District.
3. One CC to Sri D S N V Prasad Babu, Advocate [OPUC]
4. One CC to Sri Maheswara Rao Kuncheam, Advocate [OPUC]
5. Three CD Copies

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HIGH COURT

DATED:30/11/2023

ORDER

TRCMP.No.298 of 2023



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ALLOWING THE TRANSFER CIVIL
MISCELLANEOUS PETITION