

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

TRANS. CIVIL MISC.PETITION NO: 482 OF 2023

Between:

1. M/s Colonial Constructions Pvt. Ltd, Rep by its Authorised signatory, Shivraj Singh Thakur, S/o. Late Raghuraj Singh Thakur, aged 51 years, Occ. Business, Situated at 3-6-150, 2nd floor, Krishna Kunj, Himayathnagar Main Road, Hyderabad -29.
2. M/s. Colonial Property Management Pvt. Ltd, Rep by its Authorised signatory, Shivraj Singh Thakur, S/o. late Raghuraj Singh Thakur, aged 51 years, Occ. Business, Situated at 3-6-150, 2nd floor, Krishna Kunj, Himayathnagar Main Road, Hyderabad -29.

...Petitioners

AND

M/s. Spencer's Retail Ltd, Rep. by its Managing Director , Situated at Duncan House, 1st Floor, No.31, Netaji Subhas Road, Kolkata-01. Also At M/s. Spencer's Retail Ltd., Rep. by its Authorized Signatory G. R. Srikanth, Situated at Vishnupuri, AnandBagh. R.K. Nagar Main Road , Malkajgiri. Hyderabad -500047.

...Respondent

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 withdraw the suit in O.S No. 559/2017 on the file of the Principal District and Sessions Judge-cum-Family Court, Medchal-Malkajgiri and to transfer the same to the Additional Special Court in the Cadre of District Judge for Trial and disposal of Commercial Disputes at Hyderabad and to try the said suit along with C.O.S. 27/2023 and to Conduct joint trial of both suits.

Counsel for the Petitioner(s): Sri CH Laxmi Chaya

Counsel for the Respondent: M V Hanumantha Rao

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

Tr.C.M.P.No. 482 of 2023

ORDER:

This petition is filed by petitioners seeking transfer of O.S.No.559 of 2017 pending on the file of the learned XVI Additional District Judge, Ranga Reddy District, Malkajgiri, to the learned Principal Special Court in the Cadre of District Judge for trial and disposal of Commercial disputes at Hyderabad to try along with C.O.S.No.27 of 2023.

2. It is the case of the petitioners/plaintiffs that initially they filed a suit in O.S.No.559 of 2017, for recovery of maintenance charges for the period from March, 2017 to April, 2020, before the learned XVI Additional District Judge, Ranga Reddy District, Malkajgiri, even then respondent did not pay any amount, as such they constrained to file C.O.S.No.27 of 2023, for the next period i.e., October-December 2020, 2021, 2022 and 2023 (January-July) before the learned Principal Special Court in the Cadre of District Judge for trial and disposal of Commercial disputes at Hyderabad.

3. In the Counter filed by the respondent, he opposed the present petition on several aspects. He stated that petitioners have filed O.S.No.559 of 2017 in the year 2017 and is valued at Rs.38,72,330.82/- and later filed I.A.No.2015 of 2020 to enhance and include the alleged claim arising from April, 2017 till September, 2020 for further amount of Rs.70,89,600/- with interest and for further amount of Rs.18,76,800/- with interest. Thereafter petitioners approached this Court by way of C.R.P.No.3028 of 2022 seeking to direct the learned Principal District Judge, Malkajgiri to dispose of the I.A.No.36 of 2017. As it was already reserved, the Civil Revision Petition was dismissed as infructuous. Later, I.A was allowed and amendment was carried out without determining the correctness of the claims. Thereafter, petitioners filed a fresh suit vide C.O.S.No.27 of 2023 for the same relief. He also stated that petitioners have obtained an order of ad-interim injunction vide order dated 04.08.2023. As the petitioners are aware that the order of ad-interim injunction shall be vacated, once the respondent files his counter, they filed an application under Order VII rule 11 just to delay the proceedings. So also, in C.O.S.No.27 of 2023, they made M/s.Spencer's Retail Limited as sole respondent, but in I.A.No.219 of 2023 in O.S.No.27 of 2023, they made several respondents i.e., 9 in number. It is

also stated that the respondents against whom ad-interim injunction Order was obtained, have not been included as a party in C.O.S.No.27 of 2023. Petitioners are habitual litigants, suit is coming up for framing of issues and in the year 2018 itself, the learned XVI Additional District Judge, Malkajgiri directed the petitioners to commence the trial, but only to prolong the litigation, they filed another suit and is barred by Section 10 of the C.P.C.

4. He further stated that to transfer the suit from one place to other, the following conditions are to be considered:

- i) The suits must be between the same parties.*
- ii) The matter in issue in the later suit must be directly and substantially the same as in the previous suit.*
- iii) Both the suits must be pending in a Court of law.*
- iv) The parties must be litigating under the same title in both the suits.*

He also stated that suit filed before the commercial Court deserves to be stayed, as it is the repetition of O.S.No.559 of 2017. Moreover, in pursuant to Section 12A of the Commercial Courts Act, there is no pre-institute mediation process, as such transfer of petition has to be dismissed. It is also stated that there is no privity of contract between petitioners and respondent.

5. Though, initially it appears that both the suits were filed only for maintenance charges, petitioners herein initially filed suit in O.S.No.559 of 2017 only for maintenance charges with a particular period and again filed amendment application to add the maintenance charges for a further period. They filed another suit before the commercial Court, as the suit for maintenance charges exceeded one crore and it is filed in the year 2023. O.S.No.559 of 2017 is coming up for trial and in C.O.S.No.27 of 2023, rejection petition was also filed, as such the clubbing of matters leads to further delay and amounts to protracting the litigation. Therefore, this Court finds no reasonable ground to transfer and club the matters, though both the suits are filed for same relief with the same parties.

6. In the result, the Transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

SD/-MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The XVI Addl. District Judge at Malkajgiri.
2. The Principal Special Court in the Cadre of District Judge for Trial and Disposal of Commercial Disputes.
3. One CC to Sri CH Laxmi Chaya, Advocate [OPUC]
4. One CC to Sri M V Hanumantha Rao, Advocate [OPUC]
5. Two CD Copies

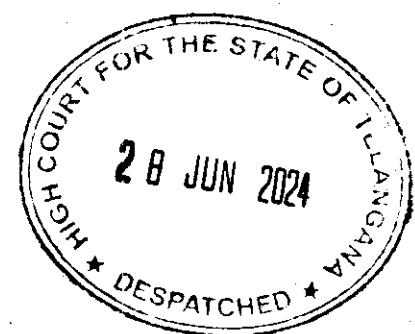
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HIGH COURT

DATED: 30/04/2024

ORDER

TRCMP.No.482 of 2023



**DISMISSED
THE TRANSFER CIVIL MISC.PETITION**

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