

THE HON'BLE SRI JUSTICE M.GANGA RAO

Transfer Civil Miscellaneous Petition No.111 of 2021

ORDER:

This application, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner requesting to withdraw O.S.No.7 of 2020 from the file of Senior Civil Judge's Court, Markapur, Prakasam District, and transfer the same to the file of the Commercial Court at Vijayawada, for trial and disposal in accordance with the procedure established by law.

The case of the petitioner is that based on the dissolution deed of partnership firm - Sri Venkata Satya Saibaba Industries, dated 16.02.2019, she filed OS.No.7 of 2020 before the Senior Civil Judge's Court, Markapur, Prakasam District, seeking partition and separate possession of suit schedule property consisting of movable and immovable assets situated in Sy.No.34, 36/1B, House No.5-18,5-19,5-20 in an extent of Ac.1.61 cents. The present transfer petition is filed seeking to withdraw the suit to the Commercial Court, Vijayawada, stating that the dispute raised in the said suit is commercial dispute as defined in Section 2(1)(c)(vii) and also (xv) and for the specified value as defined in Section 2(1)(i) of Commercial Courts Act, 2015 and as amended by Amendment Act 28 of 2018 which came into force from 03.05.2018.

Counter affidavit has been filed by the 1<sup>st</sup> respondent on his behalf and on behalf of the respondents 2 to 9 *inter alia* stating that Section 15(2) speaks of transfer of a commercial dispute pending before the civil Court whereas the suit filed by the petitioner is for partition and separate possession in respect of the immovable property. As such, the suit filed by the petitioner does not come within the purview of the said Section and the suit cannot be transferred as contended by the petitioner. The present transfer petition is filed only with a view to harass the respondents. The dispute in respect of immovable property cannot be transferred to a commercial Court. Further, in the suit

written statements were filed by the contesting defendants and in IA.No.168 of 2020 written arguments were filed by the petitioner on 17.02.2021 against the counter of the defendants. As such, as the IA is reaching its finality and the suit schedule property is under the jurisdiction of the Senior Civil Judge's Court, Markapur, the case is barred for transfer.

Learned counsel for the petitioner submits that the petitioner inadvertently and by mistake filed the suit OS.No.7 of 2020 before the Senior Civil Judge's Court, Markapur, Prakasam District. The dispute raised in the suit is commercial dispute. The petitioner ought to have filed the present suit before the jurisdiction of the commercial court. In support of his request for transfer, he has drawn the attention of this Court to Section 15(5) of the Commercial Courts Act.

Learned counsel appearing for the respondents while reiterating the counter submits that the partnership firm was already dissolved and the suit schedule property is not being used for the operations of the firm. The suit in respect of immovable property does not come under the purview of commercial court. The Senior Civil Judge is the competent authority for conducting trial of the suit and for passing orders in the said suit. The present transfer petition is filed only with a view to delay the proceedings in the said suit and thereby harass the respondents.

Having considered the facts and circumstances of the case, submissions of the learned counsel and on perusal of the record, this Court found that the dispute raised in OS.No.7 of 2020 is a commercial dispute for specified value as defined under Section 2(1)(c)(vii) and (xv) of the Commercial Courts Act as the value of the suit is more than Rs.3,00,000/-. The suit OS.No.7 of 2020 has been filed based on the dissolution deed of partnership firm seeking partition and separate possession of the schedule property. The subject property hitherto was used for business of the partnership firm, wherein the petitioner was a

partner. Hence, the schedule property exclusively used for trade or commerce as defined under Section 2(1)(c)(vii) of the Commercial Courts Act has been interpreted by the Hon'ble Supreme Court in CA.No.7843 of 019. The Commercial Court has jurisdiction to adjudicate the *lis*. This Court found that it is just and appropriate to transfer the suit.

In the result, the Tr.C.M.P is allowed and O.S.No.7 of 2020 on the file of the Principal Senior Civil Judge's Court, Markapur, Prakasam District, is withdrawn from the file of the said Court and is transferred to the file of the Commercial Court, Vijayawada. Accordingly, the transferor Court is directed to forthwith transmit the record in OS.No.7 of 2020 to the transferee Court. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

28.01.2022  
Vjl

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M. GANGA RAO, J

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