

(2004) 03 AP CK 0076
In the Andhra Pradesh High Court
Case No : Tr. CMP. No. 66 of 2004

Nellore Arya Vysya Bullion Merchants and Pawan Brokers
Association and Others

APPELLANT

Vs

K. Bhaskar Rao and Others

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2004) 5 ALD 12 : (2004) 3 ALT 511 : (2004) 3 BC 512

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Sridhar Reddy, for the Appellant; V.V. Narayana, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This Transfer CMP is filed seeking transfer of O.S. 1233 of 2000 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad to the Court of Senior Civil Judge, Nellore to be tried along with O.S. 38 of 1989, 30/2000 and 113/2000 pending in that Court.

2. The first respondent filed O.S. 1233 of 2000 in the Court of II Senior Civil Judge, City Civil Court, Hyderabad against the petitioners 1 to 4 and respondents 2 and 3 for recovery of a sum of Rs. 3,48,440/- (Rupees Three lakhs forty eight thousands four hundred and forty only). It is his case that respondents 2 and 3 borrowed a sum of Rs. 2,00,000/- from one Mr. T. Suresh on 29-05-1997 and executed a promissory note for repayment of it. He contends that the holder of the promissory note, in turn, had transferred it in his favour. He pleaded that despite several demands, petitioners 1 to 4, who have succeeded to respondents 2 and 3 in administration of the association, have not repaid the same.

3. The petitioners contend that the promissory note, which is the subject matter of the suit, itself was brought about fraudulently by respondents 2 and 3

detrimental to the interests of the first petitioner association. It is also their case that as many as five transactions, similar to this were brought about by respondents 2 and 3, which in turn, resulted in filing of separate suits, namely, O.S. 138 of 1999 in the Court of District Judge, Nellore, O.S. 30 of 2000 in the Court of II Additional District Judge, Nellore, O.S. 113 of 2000 in the Court of Senior Civil Judge, Nellore, O.S. 117 of 1999 and O.S. 138 of 1999 in the Court of Additional Senior Civil Judge, Nellore. It is their contention that the nature of allegations as regards the validity and enforceability of the promissory notes in all the suits including the one filed by the first respondent is one and the same. They contend that the present suit is deliberately filed at Hyderabad only to harass the petitioners and that apart from causing inconvenience, trial of the suit at Hyderabad is likely to result in conflicting judgments on the same set of facts.

4. On behalf of the first respondent, it is contended that the parties to all the suits are different, the causes of action are independent and there is nothing common in all the suits. According to him, it is permissible in law to file a suit, at a place where the holder in due course comes into possession of a negotiable, instrument.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

6. Tr. C. MPs u/s 24 of the CPC are decided mostly on the grounds of territorial jurisdiction, and convenience of the parties. While the former is a purely a legal consideration and to be decided on settled principles of law, the latter depends on the facts and circumstances of each case. No hard and fast rule can be laid down in such matters. Where, however, the transfer of proceedings is sought from one court to another to enable trial of several matters together, the effort is to avoid conflicting decision on similar questions of fact, depending on the factors such as the extent of similarity of the parties, causes of action or facts giving rise thereto, etc.

7. Reverting to the facts of the case, it is true that the plaintiff in O.S. 1233 of 2000 on the file of the II Senior Civil Judge, City Civil Court, Hyderabad is different from those in the other suits referred to above pending in different courts at Nellore. It, however, needs to be observed that the contesting defendants in all these suits are similar. The claim is against the office bearers of the first petitioner association. The claims are not personal against them. It is not in dispute that the circumstances under which, the transaction in all the suits referred to above came into existence are similar. It was the respondents 2 and 3 who have brought about these transactions and they are no more in the office or in the management of the first petitioner association.

8. The contentions raised on behalf of the first petitioner association and its existing office bearers vis-a-vis the transactions are similar. Though it is true that it is competent for a holder in due course of a negotiable instrument to institute the proceedings at the place where he comes into possession of the same, the

other factors which necessitate the transfer of such proceedings to another court to avoid conflicting judgments cannot be ignored. When different courts at Nellore are adjudicating upon the same set of facts, may be in relation to different transactions, it is not only advisable but also necessary, that the matters pending on similar questions are dealt with together.

9. Under these circumstances, O.S. 1233 of 2000, on the file of II Senior Civil Judge, City Civil Court, Hyderabad, which is said to have been since transferred to the Court of X Senior Civil Judge, City Civil Court, Hyderabad is withdrawn and transferred to the Court of Senior Civil Judge, Nellore to be tried along with O.S. 113 of 2000.

10. The Tr. CMP is accordingly, allowed. No order as to the costs.