

(2003) 02 AP CK 0113

In the Andhra Pradesh High Court

Case No : T.R.C.M.P. No"s. 322 and 482 of 2002

Satyasri Fertilisers

APPELLANT

Vs

E.I.D. Parry (India) Ltd.

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 2003 AP 312

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : H. Srinivasa Rao and B. Nalin Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Tr. C. M.P. No, 322 of 2002 is filed by the petitioner, M/s. Satyasri Fertilizers, represented by its Proprietor Potturi Koteswara Rao, against the respondent, M/s. E.I.D. Parry (India) Ltd., Chennai, represented by its Power of Attorney B. B. Muthu, praying for transfer of O.S. No. 12 of 2002 on the file of the II Additional District Judge, Krishna at Vijayawada to be tried along with O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur and to pass such other orders.

2. Tr. C.M.P. No. 482 of 2002 is filed by M/s. E.I.D. Parry (India) Ltd., Chennai, represented by its General Power of Attorney Holder as against M/s. Satyasri Fertilizers represented by its Proprietor Potturi Koteswara Rao, praying for transfer of O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur to the Court of the II Additional District Judge, Vijayawada to be tried along with O.S. No. 12 of 2002 and to pass such other orders.

3. It is stated in Tr. C.M.P. No. 322 of 2002 that the respondent had filed a suit O.S. No. 12 of 2002 on the file of the II Additional District Judge, Vljayawada seeking a decree for a claim of Rs. 21,27,715-00 along with interest at the rate of 18% P. A. It is also stated that the petitioner is a dealer agent for the plaintiff-

company at Guntur for the past more than three decades and in the year 1997 the petitioner expressed his inability to continue the business on behalf of M/s. EID Parry (India) Ltd. Then the concerned officers of EID Parry (India) Ltd. persuaded him to continue the business. On the representation and assurance on behalf of the company that they would reimburse the loss that he may incur as their dealer if the company itself cannot collect from its purchasers. The petitioner incurred huge losses to the tune of Rs. 18,08,655-65 and hence the petitioner filed the suit in O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur and the same is pending before the said Court. It is also stated that during the course of business transactions the petitioner issued several blank cheques at the instance of M/s. EID Parry (India) Ltd. on the representation that it is the usual practice in the fertilizer business to enable the company to realize the money due in respect of the supplies of the stocks that were to be delivered in future course and the blank cheques will be filled in with the amounts outstanding after the lapse of the credit period and on that the above blank cheques were issued with a clear intention that the cheques will not be filled and presented for payment without delivering the stocks or the amounts become actually due. It is further stated that M/s. EID Parry (India) Ltd., the plaintiff in O.S. No. 12 of 2002 had filed the above speculative and frivolous suit only to harass him and for wrongful gain without any liability on his part and the petitioner is having a very good defence in the suit and the balance of convenience lies in his favour. It is further stated that the petitioner is a diabetic patient, aged about 65 years and his toe of left leg (leg fingers) was amputated at M. V. Hospital, Chennai and he was advised not to move out of Guntur apart from strict diet. In view of the medical advice, the petitioner is not in a position to defend the case at Vijayawada. It is also stated that since the cause of action arose at Guntur, the petitioner filed O.S. No. 94 of 2002 against M/s. EID Parry (India) Ltd., and unless O.S. No. 12 of 2002 is transferred from Vijayawada to Guntur, the petitioner would suffer heavy loss.

4. It is brought to my notice that the above Tr. C. M.P. No. 322 of 2002 was allowed ex parte on 30-10-2002 but, however, the said ex parte order dated 30-10-2002 was subsequently set aside as per order dated 21-1-2003 passed in C.M.P. No. 23610 of 2002 on the ground that the name of the counsel representing the opposite party was not printed in the cause list. That is how Tr. C. M.P. No. 322 of 2002 is coming up for hearing again before this Court.

5. M/s. EID Parry (India) Ltd., the respondent in Tr. C. M.P. No. 322 of 2002, filed Tr. C.M.P. No. 482 of 2002 praying for transfer of O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur to the Court of the II Additional District Judge, Vijayawada to be tried along with O.S. No. 12 of 2002. The General Power of Attorney Holder of the petitioner-company had sworn to the affidavit in respect of Tr. C. M.P. No. 482 of 2002. It is stated that these two suits, referred to above, are cross suits between the parties. It is further stated that the respondent in the present Tr. C.M.P., Satyasri Fertilizers is doing business in selling fertilizers and pesticides and Potturi Koteswara Rao was appointed as a

dealer on his application and the petitioner-company supplied fertilizers and pesticides from time to time to Vijayawada Branch Office and he used to pay the amounts mostly at Vijayawada and occasionally at Guntur where the petitioner opened a bank account for convenience, It is also stated that the petitioner-company has no branch office at Guntur and the transactions between the parties had taken place at Vijayawada and accounts also are maintained at Vijayawada and the evidence relating to the transactions between the parties is also available at Vijayawada. In para 4 of the affidavit certain details touching the merits of the matter relating to the liability of the respective parties also had been stated. It is also stated that the petitioner-company filed C.C. No. 1250 of 2002 on the file of the VII Metropolitan Magistrate, Chennai against Potturi Koteswara Rao for the offence punishable u/s 138 of the Negotiable Instruments Act and the respondent appeared before the learned Magistrate at Chennai and is contesting the criminal case. It is further stated that in the said circumstances the petitioner-company filed O.S. No. 12 of 2002 on the file of the II Additional District Judge at Vijayawada for recovery of the amount and as a counter blast the said Koteswara Rao had thought of filing O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur against the petitioner-company for recovery of an amount of Rs. 18,08,655-65 with interest and costs for the alleged loss sustained in the business transactions with the petitioner-company. In para 6 of the affidavit it is also stated that the petitioner-company has a branch office at Vijayawada and the transactions with the respondent took place from Vijayawada and the same were also monitored from Vajayawada and accounts were also maintained at Vajayawada and earlier the said Koteswara Rao made payments also at Vajayawada and the petitioner-company has authorized representative stationed at Vajayawada and the said company has no Branch Office at Guntur and it does not have any authorised representative at Guntur to represent the petitioner-company in the legal proceedings. Hence, the relief of transfer was prayed for by the petitioner-company.

6. Since common order is being passed in both the Tr. C.M.Ps., the parties will be referred to as "the petitioner-company" and "the respondent" for the purpose of convenience.

7. Sri H. Srinivasa Rao, the learned counsel representing the respondent had submitted that the respondent is not keeping up good health and he is a diabetic patient and is also sufficiently aged. The counsel also submitted that no doubt the respondent was dragged to the Court at Chennai also by launching prosecution and it is Inevitable for him to attend the said Court and that by itself cannot be a ground to refuse grant of relief in the present Tr. C. M.P. filed by him. The learned counsel also submitted that whatever may be the reason, the petitioner-company also had admitted in the Tr. C. M.P. that accounts had been opened at Guntur also. In this view of the matter it can be definitely said that the cause of action, at least a part of the cause of action arose at Guntur and hence the jurisdiction of Court at Guntur had been invoked by the respondent. It is in accordance with the provisions of the Code of Civil Procedure. The learned

counsel further elaborating his submissions had pointed out that while considering a Transfer CMP the convenience and inconvenience of the parties and other factors also may have to be taken into consideration. Here is petitioner-company which is having sufficient following and keeping in view of all the factors it is not at all difficult for the petitioner-company to come over to Guntur for the purpose of contesting both the suits in the event of the suit at Vijayawada being transferred to be tried along with the suit at Guntur, While concluding his submissions, the learned counsel also pointed out that whatever may be the reason, already an order was passed by this Court and the file also was received by the concerned Court at Guntur but, however, in view of the said order being set aside subsequent thereto, further proceedings had not been taken up in the respective suits.

8. Per contra, Sri Nalinikumar, the counsel representing the petitioner-company had made the following submissions. The learned counsel contended that the petitioner-company is not having any office at Guntur nor it has any authorized representative nor the company is maintaining any accounts, inclusive of bank accounts at Guntur. The learned counsel in all fairness had submitted that the bank account opened was only to facilitate the respondent to have the transactions and nothing more and that aspect cannot be taken advantage by seeking transfer of the matter. The learned counsel further pointed out that the ground raised that he is a diabetic patient cannot be a ground for seeking transfer especially keeping in view the distance between Guntur and Vajayawada. No doubt, the learned counsel made several submissions touching the merits and demerits of the matter which need not be gone into at this state. The respective counsel also pointed out the dates of the institution of the suits.

9. Heard both the counsel and also perused the respective pleadings of the parties.

10. Both the counsel in all fairness had accepted that in view of the facts and circumstances of the case both the suits are to be tried by one and the same Court. Now, the question is whether the suit on the file of the II Additional District Judge at Vajayawada is to be transferred to the II Additional District Judge at Guntur or the suit at II Additional District Judge at Guntur is to be transferred to the II Additional District Judge at Vajayawada. Section 24 of the CPC deals with general power of transfer and withdrawal. As can be seen from the language of Section 24 of the CPC the powers, no doubt, are very wide but, however, those powers are being exercised while transferring matters within certain permissible limitations. That is the reason why most probably both the counsel had advanced arguments relating to the cause of action, part of cause of action and also the institution of the suits in the respective Courts. As can be seen from the facts of the case there cannot be any dispute that the respective parties had instituted the suits In respective Courts definitely in accordance with the provisions of the Code of Civil Procedure, but, however, in view of the fact that both the parties are claiming recovery of amounts on certain grounds, it is

definitely advisable that in the interest of both the parties both the matters are to be tried and disposed of by the same Court by a common judgment. In the light of factual background, now the question is which suit is to be transferred. Except the opening of account at Guntur and the ground that the respondent is a diabetic patient, the authorized representative, the maintenance of accounts and all other proceedings relating to the transactions had taken place at Vajayawada. The distance in between Guntur and Vajayawada also is short. No doubt the ground that the respondent is a diabetic patient had been argued with all emphasis. In view of the fact that under the present CPC the affidavit evidence relating to the chief-examination had been introduced for the purpose of cross-examination or otherwise, if there is any difficulty in this regard, the respondent is at liberty to move an appropriate application relating to expenses and in all fairness the counsel for the petitioner-company also had agreed for such a course. Hence, it is needless to say that the respondent is at liberty to move such an application in the event of any difficulty on the ground of health. In view of the fact that the petitioner-company is having a branch office at Vajayawada and almost all the transactions have taken place at Vajayawada and the representative of the petitioner-company is at Vajayawada, in fitness of things, subject to the observations made above relating to moving of appropriate application by the respondent, the suit O.S. No. 94 of 2002 on the file of the II Additional District Judge, Guntur is hereby withdrawn and transferred to the file of the II Additional District Judge, Vajayawada to be tried along with O.S. No. 12 of 2002. Accordingly Tr. C.M.P. No. 322 of 2002 is dismissed and Tr. C.M.P. No. 482 of 2002 is hereby ordered, subject to the observations made above. In the facts and circumstances of the case, there will be no order as to costs.