

Anitha Vs. Anil Kumar

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Court : Andhra Pradesh

Decided On : Sep-21-2005

Reported in : 2005(5)ALD723; 2005(5)ALT576

Judge : G. Chandraiah, J.

Acts : Indian Penal Code (IPC) - Sections 498A; ; [Code of Civil Procedure \(CPC\)](#) ,
[1908](#) - Sections 23(3) and 25

Appeal No. : Tr.C.M.P. No. 294 of 2005

Appellant : Anitha

Respondent : Anil Kumar

Advocate for Def. : C. Raghu, Adv.

Advocate for Pet/Ap. : L. Ravichander, Adv.

Disposition : Revision allowed

Judgement :

ORDER

G. Chandraiah, J.

1. Heard both the counsel.

2. The petitioner is the wife. She filed this petition seeking transfer of M.C. No. 6/2005 filed by the respondent, who is her husband, for restitution of conjugal rights, on the file of Civil Judge (Sr.D.N.), Sadam, Gulbarga District, Karnataka to the Family Court, City Civil Court, Hyderabad.

3. In the affidavit filed in support of the transfer petition, the petitioner stated that her marriage with the respondent was performed on 16-6-2002 and as her mother-in-law and brother-in-law harassed her mentally and physically and demanded dowry, on 26-3-2004 she was constrained to leave the company of the respondent and go to her parents. The petitioner is presently residing in her brother's house. As the petitioner was harassed, she filed criminal case No. 445/2004 under Section 498-A I.P.C. on the file of XXII Metropolitan Magistrate, Nampally, Hyderabad. It is stated that as the petitioner was unable to maintain herself, filed M.C. No. 38/2005 on the file of Family Court, Hyderabad. Subsequently, the respondent filed M.C. No. 6/2005 on the file of Civil Judge (Sr. D.N.) at Sadam, Gulbarga District, Karnataka for restitution of conjugal rights. The petitioner stated that the respondent and her in-laws have threatened her for filing petition seeking for divorce and, therefore, apprehends bodily harm to her. As the respondent filed petition for restitution of conjugal rights after her petition for divorce was filed and as she being unemployed woman, it would be difficult for her to go to Sadam on every date of hearing and, therefore, sought the transfer as stated above.

4. The respondent filed counter and denied the allegations made by the petitioner in the transfer petition. He stated that this Court has no jurisdiction to transfer M.C.No. 6/2005 on the file of Civil Judge, Sadam as this Court has no jurisdiction over the Civil Court within the State of Karnataka. He further stated that as he is working at Sadam, it would be very difficult for him to come to Hyderabad and attend the courts and, therefore, he sought for dismissal of the transfer petition.

5. The learned counsel appearing for the petitioner submitted that as the petitioner was harassed, she was forced to leave the company of respondent at Sadam and reside at Hyderabad and file divorce petition and criminal case at Hyderabad. As she is unable to maintain herself, she also filed maintenance case. He contended that the convenience of the wife is the paramount consideration in matrimonial

cases seeking transfer. He stated that the wife filed cases in the year 2004 and as a counter blast, the respondent filed petition for restitution of conjugal rights in the year 2005 only with a mala fide intention to harass the petitioner and as the petitioner is an unemployed woman living with her parents, will be unable to attend the court at Sadam. With regard to jurisdiction, the learned counsel for the petitioner, referring to Section 23(3) of Civil Procedure Code (for short 'the Code') contended that since the cases filed by the petitioner in the courts were situate at Hyderabad, the transfer petition can be filed at Hyderabad also. He stated that in matrimonial matters, the convenience of the wife is the only consideration and, therefore, sought for allowing of the petition. In support of his contention, he relied on the judgment of a learned single Judge of this Court in *Vempati Sarada v. Vempati Kaladhat*, 2003 (1) An.W.R. 539 (AP.).

6. On the other hand the learned counsel for the respondent apart from denying the allegations with regard to harassment, mainly contended that as per Section 23(3) of the Code, this Court has no jurisdiction to transfer the case, since the court in which the case was filed is situate at Sadam, which is subordinate to Karnataka High Court and the petition for transfer has to be made to the said Court. He submitted that as this Court will not have any administrative control over the subordinate courts in different States, the application as per Section 23(3) of the Code has to be filed before the High Court, under whose jurisdiction, the subordinate court in which the case was filed, is situate. In support of his contention, he relied on the judgment of another learned single Judge of this Court in *Reghavendra Exports and Anr. v. Nawaker Enterprises*, : AIR 2004 AP84 . With this contention, he sought for dismissal of the transfer petition.

7. The learned counsel for the petitioner replying to the above contentions submitted that as the law laid down by two learned single Judges on the same point is different, the matter has to be referred to the Bench. On the other hand, the learned counsel appearing for the respondent submitted that the matter is squarely covered by the judgment of *Reghavendra Export's case* and in the case relied on by the counsel for the petitioner the learned single Judge was dealing with the jurisdictions under Sections 23 and 25 of the Code and therefore the matter may not be referred to the Division Bench, as there is no conflict.

8. In view of the above rival contentions, the following issue arises for my consideration:

'Whether this Court has jurisdiction under Section 23(3) of the Code to transfer a case pending in a subordinate court of a different High Court to the subordinate court of this High Court?'

9. For this purpose, it is necessary to consider Section 23 of the Code, which provides the courts to which the application for transfer has to be made; and the judgments of the two learned single Judges, before considering the facts and circumstances of the case.

10. For the purpose of resolving the present controversy, Sub-section (3) of Section 23 is relevant and the same is extracted as under:

23. To what Court application lies:

(1)

(2)

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of, whose jurisdiction the Court in which the suit is brought is situate.

11. A plain reading of the above provision indicates that for transferring a case which is pending in a subordinate court to a particular High Court, to a subordinate court of different High Court, the application shall be made to the High Court under whose jurisdiction, the Court in which the suit is brought i.e., instituted, is situate. In the present case, the case filed by the husband is at Sadam, which is subordinate to the High Court of Karnataka. Now the petitioner wants that case to be transferred to a court in the State of A.P., for being tried along with the case filed by her for divorce. Therefore, in view of Section 23(3) of the Code, the transfer application has to be filed before the High Court of Karnataka. Further as submitted by the counsel for the respondent, the Court in which the respondent filed case, is not under the administrative control of the High Court of A.P.

Therefore, it would be expedient to file transfer application before the High Court, under whose administrative control the Court in which the husband filed the case, is situate. In view of this reasoning, the contention of the counsel for the petitioner with regard to the aspect of jurisdiction is rejected and the contention of the counsel for the respondent is upheld.

12. Coming to the aspect of convenience, no doubt in matrimonial matters, the settled principle is that convenience of the wife has to be given paramount consideration. But when this Court lacks jurisdiction even to entertain the transfer petition, I am of the opinion that the said aspect cannot be gone into.

13. With regard to the conflict of opinions in the judgments of two learned single Judges is concerned, it is to be seen that both the judgments are delivered while considering the controversies under different arenas. In the judgment of my learned brother Justice P.S. Narayana, in Vempati Sarada's case (1 supra), the point of controversy was not mainly with regard to the jurisdiction of the High Court under Section 23(3) of the Code. The learned Judge apart from reaffirming that convenience of the wife has to be taken into consideration, mainly considered the contention with regard to conflict of jurisdictions of High Court and Supreme Court under Sections 23(3) and 25 of the Code. The relevant portion of the judgment of the learned single Judge in this regard at paragraph No. 11 is extracted as under:

'A reading of both the provisions will clearly go to show that these provisions are independent provisions and absolutely there is no conflict between these two provisions. Merely, because the High Court is empowered to order transfer of a proceeding pending before a subordinate Court within its jurisdiction to another Court subordinate to High Court, it may not come in the way of powers which may be exercised by the Supreme Court under Section 25 of the Code. Hence, by a close reading of both the provisions aforesaid, I am of the considered opinion that the power under Section 23(3) of the Code can be definitely exercised by this Court and the same is not in any way curtailed by Section 25 of the Code. In fact, I am well supported in this regard by the view expressed by this Court in Mamta Gupta's case (AIR 2000 A.P. 394). Hence, in view of the same, I am of the considered opinion that such power can be exercised by invoking Section 23(3) of

the Code....'

14. Further the learned single Judge considering the convenience of wife, transferred the case in O.P. No. 41/2002 filed by the Husband at Family Court at Secunderabad for dissolution of marriage to the Court of Principal Subordinate Judge, Changanalpet, Tamil Nadu, for being tried along with H.M.O.P. No. 179/2001 filed by the wife for restitution of conjugal rights on the file of Principal Subordinate Judge at Changanalpet in the State of Tamil Nadu. Further it is to be conspicuously noticed that the wife has rightly filed petition before this Court, as the O.P. filed by her husband is instituted in a court subordinate to this High Court, as per Section 23(3) of the Code. Therefore, there was no occasion for the learned single Judge to focus on the point of jurisdiction. The controversy mainly revolved around the jurisdictions under Sections 23(3) and 25 of the Code. Therefore, even as per the judgment relied on by the counsel for the petitioner, the transfer petition filed by the petitioner before this Court is not maintainable.

15. Coming to the judgment of another learned brother Justice C.Y. Somayajulu in Reghavendra Exports case (2 supra), the point dealt with is directly on the aspect of jurisdiction to entertain transfer petition under Section 23(3) of C.P.C. The learned single Judge held that the application filed in the High Court of A.P. for the transfer of a suit pending in a court situated in another State, to a court in Andhra Pradesh is not maintainable and the application has to be filed only in the High Court in whose jurisdiction the court in which the suit is filed is situate. The reasoning of the learned single Judge while considering Sub-section (3) of Section 23 of the Code is extracted as under for better appreciation:

'3. From Sub-section (3) of Section 23 extracted above, it is clear that an application for transfer has to be made in the High Court within the local limits of whose jurisdiction the Court where the suit brought is situate. Since, O.S. No. 187 of 2003 was instituted in the Court at Surat, and since Surat is not within the jurisdiction of this High Court, the application for transfer has to be filed in the High Court to which the Court at Surat is subordinate but not in this High Court. I am unable to agree with the contention of the learned Counsel for the petitioner, that since the petitioner wants the suit to be brought to the jurisdiction of a Court, which

is subordinate to this Court, this Court has jurisdiction to entertain this application. The expression 'suit is brought' in Section 23(3) CPC relates to the place where the suit was instituted and it cannot be interpreted to mean, the Court to which suit 'has to be brought'. So, the petition to transfer a suit instituted at Surat to a Court, which is subordinate to this Court, is not maintainable in this Court.'

(Emphasis added)

16. Though the above case is not a matrimonial matter, the legal principle laid down with regard to jurisdiction to entertain transfer applications under Section 23(3) of C.P.C. is binding. Since the present issue is mainly with regard to jurisdiction, in view of the above judgment of the learned single Judge, the present transfer petition is not maintainable.

17. From a careful reading of the judgments (1 and 2 supra) of my learned brothers CYS, J and PSN, J, it is clear that they were delivered while dealing with different aspects and in fact, as stated above, there is no controversy at all. Hence, I see no reason to refer the matter to a Division Bench for clarification.

18. Apart from the judgment of my learned brother CYS, J in Reghavendra Export's case (2 supra), similar view was also expressed by a Division Bench of Madhya Pradesh High Court in Swami Swaroopanand v. Ramji, : AIR 1979 MP50 (D.B.). considering various judgments of different High Courts and also the Supreme Court in Western U.P. Electric & Power Supply Co. Ltd. v. Hind Lamps Ltd., 1969 (2) SCWR 16. In the said judgment the Division Bench held at paragraph 10 that 'Where a suit is sought to be transferred to a court subordinate to another High Court, the application for transfer has to be made in the High Court within whose jurisdiction the suit is pending'.

19. In view of the foregoing reasons, as this Court has no jurisdiction to entertain the transfer petition to transfer the case pending in a court subordinate to different High Court, to a Court subordinate to this Court under Section 23(3) of the Code, without going into the other merits of the case, the transfer petition is dismissed, leaving it open to the petitioner to agitate the same before appropriate court.

20. In the circumstances of the case, there shall be no order as to costs.

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