

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**  
**TR.CMP.No.65 OF 2011, Tr.CMP.No.113 of 2013, Tr.CMP.No.151 of 2014,**  
**Tr.CMP.No.152 of 2014 & Tr.CMP.No.26 of 2014**

**COMMON ORDER:**

1                    Since the point involved in all these petitions is interrelated with each other, all these petitions are disposed of by this common order.

2                    Tr.CMP No.65 of 2011 is filed seeking to withdraw O.S.No.138 of 2009 pending on the file of the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada and to transfer the same to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada to be tried along with O.S.No.139 of 2009.

3                    Tr.CMP No.113 of 2013 is filed seeking to withdraw and re-transfer the two suits O.S.No.138 of 2009 and O.S.No.139 of 2009 which are under transfer to the Court of III Additional Chief Judge, City Civil Court, Hyderabad, to the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada and to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada respectively.

4                    Tr.CMP No.151 of 2014 is filed to hold O.S.No.138 of 2009 which has already been withdrawn from the file of the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada and transferred to the Court of the III Additional Chief Judge, City Civil Court, Hyderabad (renumbered as O.S.No.170 of 2013) shall be tried along with O.S.No.243 of 2009.

5                    Tr.CMP No.152 of 2014 is filed to hold that O.S.No.139 of 2009, which has already been withdrawn from the file of the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada and transferred to the Court of III Additional Chief Judge, City Civil Court, Hyderabad (renumbered as O.S.No.234 of 2013) shall be tried along

with O.S.No.243 of 2009 in the interests of justice.

6 Tr.CMP No.26 of 2014 is filed seeking to withdraw O.S.No.243 of 2009 pending on the file of the III Additional Chief Judge, City Civil Court, Hyderabad and to transfer the same to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada or to any other competent Court at Vijayawada.

7 For the sake of convenience and to avoid confusion, the parties will be referred to as they are arrayed in Tr.CMP No.65 of 2011.

8 The facts leading to filing of all the petitions are, briefly, as follows:

9 Initially, the petitioner started transport business as a proprietary concern. From the year 2005, the petitioner has been carrying on transportation business in the name and style of CMR Transport Contractors Company Private Limited (for short 'the company'). In order to carry on the business, the petitioner purchased number of tankers. The respondent has been carrying on civil contract works in different parts of the erstwhile composite State of Andhra Pradesh. One of the activities of the respondent is laying of roads in municipal corporations and national highways. For laying of the roads, the respondent required different types of petroleum products which were being supplied by Hindustan Petroleum Corporation Limited at Visakhapatnam and Indian Oil Corporation Limited at Chennai. The respondent entered into a contract with IOCL at Chennai and HPCL at Visakhapatnam, who in turn agreed to supply the petroleum products at their outlets at Visakhapatnam and Chennai respectively. The petitioner has agreed to transport the oil products through his tankers from Visakhapatnam and Chennai to different work places of the respondent. This process continued from

2001 to 2009. In the year 2009 misunderstandings arose between the petitioner and the respondent which prompted them to approach different courts for redressal. The petitioner filed O.S.No.138 of 2009 and O.S.No.139 of 2009 on the file of 12<sup>th</sup> and 13<sup>th</sup> Additional District Courts at Vijayawada respectively for recovery of transportation charges from the respondent. The respondent filed O.S.No.243 of 2009 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad against the petitioner and two others claiming damages for the alleged misappropriation of petroleum products by the petitioner. Hindustan Petroleum Corporation Limited and Indian Oil Corporation Limited are also parties to O.S.No.243 of 2009.

10                While the things stood thus, the petitioner filed Tr.CMP No.65 of 2011 seeking to transfer O.S.No.138 of 2009 pending on the file of the Court of 13<sup>th</sup> Additional District Judge, Krishna district at Vijayawada to the Court of the 12<sup>th</sup> Additional District Judge, Vijayawada to be tried along with O.S.No.139 of 2009 pending on the file of that Court. The respondent filed counter in the transfer petition stating that O.S.No.243 of 2009 is pending on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad.

11                While so, this Court allowed Tr.CMP No.65 of 2011 by withdrawing of O.S.Nos.138 and 139 of 2009 which are pending on the file of the Courts of 12<sup>th</sup> and 13<sup>th</sup> Additional District Courts, Krishna District at Vijayawada and transferring to the Court of III Additional Chief Judge, City Civil Court, Hyderabad. The respondent filed Rev.Tr.CMP.MP.No.130 of 2013 in Tr.CMP No.65 of 2011 and the same is allowed by setting aside the order of this Court dated 03.12.2012 and restored Tr.CMP No.65 of 2011. This Court further directed that Tr.CMP No.113 of 2013, which is filed by the respondent, may be heard along with Tr.CMP No.135 of 2011. In the

meanwhile, the suits were transferred to the Court of III Additional Chief Judge, City Civil Court, Hyderabad and were renumbered (O.S.No.138 of 2009 as O.S.No.170 of 2013 and O.S.No.139 of 2009 as O.S.No.243 of 2013).

12                Thereafter, the petitioner filed Tr.CMP No.26 of 2014 seeking transfer of O.S.No.243 of 2009 pending on the file of III Additional Chief Judge, City Civil Court, Hyderabad to the Court of 12<sup>th</sup> Additional District Judge, Krishna district at Vijayawada.

13                The petitioner filed Tr.CMP No.113 of 2013 seeking retransfer of O.S.Nos.138 of 2009 and 139 of 2009 which were renumbered as O.S.No.170 of 2013 and O.S.No.243 of 2013 respectively pending on the file of III Additional Chief Judge, City Civil Court, Hyderabad again to Vijayawada.

14                The respondent filed Tr.CMP Nos.151 of 2014 and 152 of 2014 for retention of O.S.Nos.138 of 2009 and 139 of 2009, which were renumbered as O.S.No.170 of 2013 and O.S.No.243 of 2013 respectively at Hyderabad only.

15                The learned counsel for the petitioner submitted that the scope of present petition is limited to the extent of transferring O.S.No.138 of 2009 from the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada. He further submitted that in view of the relief sought in Tr.CMP No.65 of 2011, transferring of these two suits to the Court of III Additional Chief Judge, City Civil Court, Hyderabad to be tried along with O.S.No.243 of 2009 is not permissible under law.

16                *Per contra*, the learned counsel for the respondent submitted that the Court can transfer matters from Vijayawada to

Hyderabad even in the absence of such prayer to secure the ends of justice. He further submitted that in view of the pendency of O.S.No.243 of 2009 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad it is just and necessary to withdraw the suits O.S.No.138 of 2009 and O.S.No.139 of 2009 on the file of the Court of the 13<sup>th</sup> and 12<sup>th</sup> Additional District Judges, Vijayawada and transfer the same to the III Additional Chief Judge, City Civil Court, Hyderabad.

17 The learned counsel for the respondent submitted that even though the petitioner filed the petition with certain prayer, still this Court can transfer the suits from Vijayawada Court to City Civil Court, Hyderabad while exercising jurisdiction under Section 24 CPC. To substantiate the same, he has drawn my attention to **Mohit Kumar Vs.**

**Dato Mohan Swami**<sup>[1]</sup> wherein the Hon'ble apex Court held as under:

2. It is noteworthy that vide Order dated 24.11.03 passed in S.L.P.(C) Nos. 11517-11518 of 2003, on the learned counsel for the parties agreeing for this Court exercising its jurisdiction under Section 25 of the CPC for transferring two other proceedings pending in two courts between the parties for hearing and decision in one court, this Court has directed Testamentary Case No. 1 of 2002 pending in the High Court of Uttaranchal at Nainital and Letter of Administration Case No. 26 of 2002 pending in High Court of Delhi (Original Side) At Delhi, to be transferred for hearing and decision to the High Court of Judicature at Allahabad, Bench seat at Lucknow. The said order of transfer has been carried out and the two matters are now before the High Court of Judicature at Allahabad, Bench seat at Lucknow, for hearing and decision in its Original Jurisdiction.

3. Though the prayer for transfer has been opposed on behalf of the respondents, having heard the learned counsel for the parties we are of the opinion that the suit which is now sought to be transferred is definitely associated with the two matters already ordered to be transferred. Although initially we were reluctant to accede to the present prayer for transfer, however, at the end, we have formed an opinion that the ends of justice demand such transfer being ordered. Accordingly, Original suit No. 865 of 1997 titled as " *Lt. Gen. M.L. Dar (Ret'd.) and Ors. v. Sri Vikram Singh and Ors.* " pending before Addl. District Judge-II/FTC, Dehradun, Uttaranchal and F.A.O. 52(D)/2002 pending in the High Court of Uttaranchal at Nainital titled "*Himalayan Institute Hospital Trust and Ors. v. Sri Vikram Singh and Ors.*", are directed to be transferred

for hearing and decision at Lucknow Bench Seat of the High Court of Judicature at Allahabad.

18 A perusal of the judgment of the Hon'ble apex Court clearly reveals that the Hon'ble apex Court transferred matters from Dehradun to Allahabad High Court at Lucknow bench even though the petitioner has not sought for transfer of the matter to Allahabad High Court as the Hon'ble apex Court transferred identical matters to Allahabad High Court in the year 2003. The present petition is filed under Section 24 CPC, which confers jurisdiction on the High Court to transfer matters from one district to another district within the State. Section 25 CPC confers jurisdiction on the Hon'ble apex Court to transfer matters from one State to another State. It is not out of place to extract Section 25 (1) CPC, which reads as under:

“On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.”  
(underlining mine)

19 The words 'expedient for the ends of justice' as provided in Section 25 CPC are conspicuously absent in Section 24 CPC. This clearly indicates the intention of the legislature to confer more powers on the Hon'ble apex Court for transfer of matters from one State to another State. In order to appreciate the legal contention, it is not out of place to extract hereunder the relevant paras of the ratio laid down in **Indian Overseas Bank, Madras Vs. Chemical Construction Company**<sup>[2]</sup> wherein the Hon'ble apex Court held as follows:

16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration may not always be a sure criterion justifying transfer.

17. As compared with Section 24, the power of transfer of a civil proceeding to another Court, conferred under the new Section 25 on the Supreme Court, is far wider. And, so is the amplitude of the expression, "expedient in the interest of justice" which furnishes a general guideline for the exercise of the power. Whether it is expedient or desirable in the interest of justice to transfer a proceeding to another Court is a question which depends on the circumstances of the particular case.

20 From the above, it is clear that the power conferred on the Hon'ble apex Court under Section 25 CPC is wider than the power conferred on the High Court under Section 24 CPC. It is a settled principle of law that the Court may grant the relief sought for by the petitioner. The respondent did not approach this Court seeking transfer of the suits O.S.No.138 of 2009 and O.S.No.139 of 2009 from Vijayawada Court to Hyderabad Court. Mere filing of counter by the respondent stating that O.S.No.243 of 2009 is pending on the file of III Additional Chief Judge, City Civil Court, Hyderabad itself would not automatically entitle the respondent seeking transfer of the suits from Vijayawada to Hyderabad. Section 24 CPC enables this Court *suo motu* transfer matters from one Court to another Court within the State. Only in exceptional cases, the Court can *suo motu* transfer the matters from one Court to another Court in the State in order to secure the ends of justice. The case on hand is not an exceptional case to exercise the power under Section 24 C.P.C. *suo motu*. On the other hand, one of the parties to the proceedings approached this Court by filing petition under Section 24 CPC with a specific prayer. Therefore, exercising of powers *suo motu* by this Court is not warranted. On this point, I am fortified by the ratio laid down by the Hon'ble apex Court in **Jitendra Singh vs. Bhanu Kumari**<sup>[3]</sup> wherein the Hon'ble apex Court held as under:

9. The purpose of Section 24 CPC is merely to confer on the Court a discretionary power. A court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. In certain cases it may be ordered *suo motu* and it may be done for administrative reasons. But when an application for transfer is made by a party, the court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the Court must act judicially in ordering a transfer on the application of a

party. In the instant case the reason which has weighed with the High Court for directing transfer does not really make out a case for transfer.

21           The petitioner filed O.S.Nos.138 of 2009 and 139 of 2009 for recovery of transportation charges. The relief sought for, the cause of action for both the suits and the parties to both the suits i.e. O.S.Nos.138 of 2009 and 139 of 2009 are all one and the same. The evidence to be adduced by both parties in both the suits will also be almost identical. If the two suits are allowed to be tried in two different courts, both courts have to record evidence separately by spending much time. If both the suits are transferred to one Court, the precious time of the trial Court can be saved so far as recording of evidence is concerned. That may also facilitate the parties to the proceedings to avoid duplication of work. Above all, the possibility of conflicting judgments can be avoided.

22           Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the contention of the learned counsel for the respondent that this Court can transfer the suits from Vijayawada Court to City Civil Court, Hyderabad even without filing of a petition under Section 24 CPC by the respondent for such relief is not tenable either on facts or on law.

23           For the foregoing discussion, I am inclined to allow the petition to withdraw O.S.No.138 of 2009 pending on the file of the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada and transfer the same to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada. Accordingly, Tr.CMP.No.65 of 2011 is allowed. The learned III Additional Chief Judge, City Civil Court, Hyderabad is hereby directed to transmit O.S.Nos.170 of 2013 and 234 of 2013 on its file (Old Nos.O.S.No.138 of 2009 and 139 of 2009 on the file of the Courts of 13<sup>th</sup> Additional District Court, Krishna

District at Vijayawada and 12<sup>th</sup> Additional District Court, Krishna District at Vijayawada) to the Court of 12<sup>th</sup> Additional District Court, Krishna District at Vijayawada.

24 In view of the orders passed in Tr.CMP.No.65 of 2011, no further orders are necessary in Tr.CMP Nos.151 of 2014 and 152 of 2014. Hence these two petitions are closed.

25 At the time of hearing, the learned counsel for the petitioner submitted that the very purpose of filing Tr.CMP No.113 of 2013 became infructuous. Hence Tr.CMP No.113 of 2013 is dismissed as infructuous.

26 Reverting to Tr.CMP No.26 of 2014, the contention of the learned counsel for the petitioner is that the III Additional Chief Judge, City Civil Court, Hyderabad has no territorial jurisdiction to entertain the suit and hence the same may be transferred to the 12<sup>th</sup> Additional District Judge, Vijayawada. He further submitted after full fledged trial if the learned III Additional Chief Judge, City Civil Court, Hyderabad comes to a conclusion that the Court has no territorial jurisdiction to entertain the suit, it would lead to waste of precious time of the Court as well as waste of money and time of the petitioner.

27 *Per contra*, the learned counsel for the respondent submitted that the petitioner entered into transport agreement with the respondent at Hyderabad and hence the City Civil Court, Hyderabad has territorial jurisdiction to entertain the suit. He further submitted that the petitioner submitted the invoice bills at the head office of the respondent at Hyderabad who in turn submitted the cheques in Syndicate Bank at Hyderabad, which clearly shows that part of the cause of action arose within the territorial jurisdiction of the City Civil Court, Hyderabad.

28 To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to the ratio laid down in

**C.Govindarajulu Naidu Vs. The Secretary of State for India in Council**<sup>[4]</sup>

wherein the Hon'ble apex Court held as follows:

“A suit, without leave under Cl.12, to recover goods or price of goods confiscated by Collector of Customs, after seizure thereof by the district officer on the ground that they were smuggled into British India, does not lie on the original side, simply because the order of the Collector was made within its jurisdiction, where the goods were seized outside its limits.”

29 The learned counsel for the respondent has drawn my attention to the following decisions.

i. **Gupte Cardiac Care center and Hospital Vs. Olympic Pharma Care Pvt. Ltd.**<sup>[5]</sup>

4. It has not been disputed at the Bar that the two suits arise out of the same transaction. Cause of action of one party arrayed as plaintiff would be its defence in the suit where it is arrayed as defendant. Though there are two plaintiffs and two defendants in the suit at Nashik while there is only one plaintiff and one defendant in the suit at Delhi but there is substantial identity of the parties in the two suits. The issues arising for decision would necessarily be the same. Only one of the two suit can be decreed. The decree in one suit in favour of the plaintiff in that suit would entail the dismissal of the other suit. It cannot, therefore, be denied that the two suits deserve to be heard and tried in one Court. That would avoid the possibility of any conflicting decrees coming into existence. And certainly the duplication of evidence, oral and documentary both, would be avoided. The parties and the Courts would save their time and energy which would needlessly be wasted twice over.

ii) **Chitivalasa Jute Mills Vs. Jaypee Rewa Cement**<sup>[6]</sup>

9. On the facts averred in the two complaints filed by the two parties before two different courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a Division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions, i.e., the supply of jute bags between the period 07.01.1992 and 31.12.1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral

and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.

iii) **Mohit Kumar and Ors. vs. Dato Mohan Swami**<sup>[7]</sup>

3. Though the prayer for transfer has been opposed on behalf of the respondents, having heard the learned counsel for the parties we are of the opinion that the suit which is now sought to be transferred is definitely associated with the two matters already ordered to be transferred. Although initially we were reluctant to accede to the present prayer for transfer, however, at the end, we have formed an opinion that the ends of justice demand such transfer being ordered. Accordingly, Original suit No. 865 of 1997 titled as "*Lt. Gen. M.L. Dar (Ret'd.) and Ors. v. Sri Vikram Singh and Ors.*" pending before Addl. District Judge-II/FTC, Dehradun, Uttaranchal and F.A.O. 52(D)/2002 pending in the High Court of Uttaranchal at Nainital titled "*Himalayan Institute Hospital Trust and Ors. v. Sri Vikram Singh and Ors.*", are directed to be transferred for hearing and decision at Lucknow Bench Seat of the High Court of Judicature at Allahabad.

4. So far as the suit is concerned we are conscious that already over-burdened High Court shall have another original suit added to its pendency and the learned Presiding Judge shall have to record evidence. We, therefore, feel inclined to make an observation that the learned Presiding Judge now seized of the hearing of the suit pursuant to this order of transfer, may liberally exercise his power of permitting recording of evidence on commission excepting for such witnesses who are very material and who the learned Judge, in his discretion, feels necessary must appear before him that the demeanour of any witness may need to be watched and so on.

iv) **Indian Overseas Bank, Madras Vs. Chemical Construction Company and Ors.**

18. Although the exercise of this discretionary power can not be imprisoned within them straight jacket of any cast iron formula uniformly applicable to all situations, yet, certain broad propositions as to what may constitute a ground for transfer can be deduced from judicial decisions. One of them is that where two suits raising common questions of facts and laws between parties common to both the suits, are pending in two different courts, it is generally in the interest of justice to transfer one of those suits to the other forum to be tried by the same Court, with consequent avoidance of multiplicity in the trial of the same issues and the risk of conflicting decisions thereon. The instant

case falls squarely within this category.

30 Let me consider the facts of the case on hand in the light of the principle enunciated in the cases cited supra and also in the light of Sections 19, 20 and 24 of CPC.

31 To substantiate the argument, the learned counsel for the petitioner has drawn my attention to para No.17 of the plaint i.e. the cause of action para to impress upon this Court that no cause of action arose for filing of the suit within the territorial jurisdiction of the City Civil Court, Hyderabad. On the other hand, the learned counsel for the respondent has drawn my attention to para No.7 of the written statement filed by the petitioner in the said suit to convince this Court that the petitioner has not specifically taken the plea that no part of cause of action arose within the territorial jurisdiction of the City Civil Court, Hyderabad.

32 The contention of the respondent is that the petitioner entered into an agreement with the respondent at Hyderabad. The petitioner is seriously disputing the execution of the alleged agreement at Hyderabad. The petitioner is also not admitting the submission of vouchers at Hyderabad. It is an admitted fact that the petitioner is having its head office at Vijayawada and the respondent is having its head office at Hyderabad. It is not the case of the petitioner that the agreement was entered at Vijayawada. It is needless to say that no business transaction will fructify without there being any contract or agreement. In the instant case, both parties might have entered into an agreement at some place in the erstwhile composite state of Andhra Pradesh. Whether the petitioner has transported petroleum products within the territorial jurisdiction of the City Civil Court, Hyderabad as contended by the respondent also is purely a question of fact. When the jurisdiction of a court itself is in dispute, to that effect, an issue must be framed and the same has to be decided at the time of full fledged trial. The point to be adjudicated in the petitions of this nature is whether there are any justifiable grounds for transfer of the suit. At this juncture,

www.ecourtsindia.com

this Court is placing reliance on **Kulwinder Kaur @ Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust**<sup>[8]</sup> wherein the Hon'ble apex Court held as under:

“26. In the case on hand, the High Court without stating anything whatsoever as to allegations and counter-allegations, without considering the reply submitted by the appellant herein and without recording any reason/ground passed the impugned order transferring the case. The learned Counsel for the contesting respondent no doubt submitted that the Court has not observed anything since observations by a High Court one way or the other might prejudice one of the parties to the suit. It is true that normally while making an order of transfer, the Court may not enter into merits of the matter as it *may* affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action.”

33 The learned counsel for the petitioner has drawn my attention to Section 24 (5) CPC which reads as follows:

“A suit or proceeding may be transferred under this section from a Court, which has no jurisdiction to try it.”

34 This Court can transfer the suit from one Court to another Court taking aid of the above provision of law, provided, *ex facio* the Court, in which the suit is pending, has no territorial or pecuniary jurisdiction. There is no dispute with regard to the pecuniary jurisdiction of the Court in this matter. The only question raised by the petitioner is that the City Civil Court, Hyderabad has no territorial jurisdiction.

35 A perusal of the record reveals that when Tr.CMP No.65 of 2011 came up for hearing before this Court on 26.11.2012, the learned counsel for the petitioner sought time and thereafter I.A.No.75 of 2014 in O.S.No.243 of 2009, raising the issue of territorial jurisdiction of the Court at Hyderabad to entertain O.S.No.243 of 2009, was filed on 29.11.2012 praying the trial Court to decide the jurisdictional aspect as a preliminary issue. The fact

remains that the I.A.No.75 of 2014 filed by the petitioner is pending in O.S.No.243 of 2009. The petitioner is seeking transfer of this suit on one hand placing reliance on Section 24 (5) CPC and on the other hand he filed I.A.No.75 of 2014 to frame a preliminary issue with regard to the territorial jurisdiction of the Court.

36 The entire record is before the trial Court. Therefore, the trial Court alone is competent to decide the jurisdictional aspect basing on the material available before it. Viewed from this angle also, there is no justification to transfer the suit from Hyderabad to Vijayawada. O.S.Nos.138 and 139 of 2009 were filed by the petitioner for recovery of transportation charges from the respondent, whereas, the respondent filed O.S.No.243 of 2009 for damages on the ground of misappropriation of petroleum products. The cause of action for filing of O.S.Nos.138 and 139 of 2009 is entirely different to that of O.S.No.243 of 2009. The relief sought for in O.S.Nos.138 and 139 of 2009 is also different to that of O.S.No.243 of 2009. No common questions of fact and law are involved in O.S.Nos.138 and 139 of 2009 and O.S.No.243 of 2009. The Court shall not lost sight of this aspect while exercising power under Section 24 CPC. If no common question of fact or law is involved, there is no need to conduct joint trial in both the suits. Even if two Courts are allowed to dispose of O.S.Nos.138 and 139 of 2009 and O.S.No.243 of 2009 separately, there is no chance of conflicting judgments. More over, conducting of trial by different Courts at different places certainly would not lead to multiplicity of litigation.

37 If this Court expresses any opinion with regard to the maintainability or otherwise of O.S.No.243 of 2009 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, certainly, it would amount to entering into controversial aspects touching the

merits of the main case, which is not permissible under law. Viewed from the factual or legal aspects, the petition lacks merits and bonafides. Hence Tr.CMP No.26 of 2014 is liable to be dismissed.

38 In the result, Tr.CMP.No.65 of 2011 is allowed, O.S.No.138 of 2009 pending on the file of the Court of 13<sup>th</sup> Additional District Judge, Krishna District at Vijayawada is withdrawn from the file of the said Court and transferred to the Court of 12<sup>th</sup> Additional District Judge, Krishna District at Vijayawada. The learned III Additional Chief Judge, City Civil Court, Hyderabad is hereby directed to transmit O.S.Nos.170 of 2013 and 234 of 2013 on its file (Old Nos.O.S.No.138 of 2009 and 139 of 2009 on the file of the Courts of 13<sup>th</sup> Additional District Court, Krishna District at Vijayawada and 12<sup>th</sup> Additional District Court, Krishna District at Vijayawada) to the Court of 12<sup>th</sup> Additional District Court, Krishna District at Vijayawada. In view of the orders passed in Tr.CMP.No.65 of 2011, no further orders are necessary in Tr.CMP Nos.151 of 2014 and 152 of 2014. Hence these two petitions are closed. Tr.CMP No.113 of 2013 is dismissed as infructuous and Tr.CMP No.26 of 2014 is dismissed. Consequently, miscellaneous petitions if any pending in all these petitions shall stand closed.

---

***T. SUNIL CHOWDARY, J***

***Date: 28<sup>th</sup> July, 2015***  
***Kvsn***

---

[1] (2004) 4 SCC 145

[2] (1979) 4 SCC 358

[3] (2009) 1 SCC 130

[4] AIR 1927 Madras 689

[5] (2004) 6 SCC 756

[6] (2004) 3 SCC 85

[\[7\]](#) (2004) 4 SCC 145

[\[8\]](#) (2008) 3 SCC 659