

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.231 of 2013

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.P.No.47 of 2013 from the file of the Judge, Family Court, Visakhapatnam and transfer the same to the file of the Judge, Family Court, Warangal for disposal in accordance with law.

2. The facts leading to filing of the present petition are briefly as follows: The marriage of the petitioner was performed with the respondent on 16.4.2000 at Balaji Gardens, Pocham Mydan, Warangal as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined with the respondent to lead happy matrimonial life. The petitioner and respondent lived together for a period of ten years. Out of lawful wedlock, they were blessed with a son. The petitioner lodged a complaint to the Station House Officer, Warangal Urban Woman Police Station, who in turn registered a case in Crime No.54 of 2013 against the respondent and others under Sections 498-A and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act. After completion of investigation, the Investigating Officer laid charge sheet against the respondent and others under Sections 498-A and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act. After following due procedure, learned First Additional Judicial Magistrate of First Class, Warangal has taken cognizance against the respondent under the above referred sections and numbered it as C.C.No.422 of 2013. The petitioner also filed M.C.No.46 of 2015 on the file of Family Court, Warangal seeking maintenance from the respondent. The respondent herein filed O.P.No.68 of 2015 on the file of Family Court, Warangal for custody of the child. The respondent also filed O.P.No.47 of 2013 on the file of the Family Court, Karimnagar under Section 9 of the Hindu Marriage Act. Hence the petition.

3. Learned counsel for the petitioner submitted that the petitioner is facing much difficulty to attend the Family Court at Karimnagar. Learned counsel for the respondent, on the other hand, submitted that the petitioner filed present petition to drag on the proceedings.

4. A perusal of the record clearly reveals that M.C.No.46 of 2015, O.P.No.68 of 2015 and C.C.No.422 of 2013 are pending in different courts at Warangal. The respondent herein has to attend the courts at Warangal in M.C.No.46 of 2015, O.P.No.68 of 2015 and C.C.No.422 of 2013. Learned counsel for the respondent submitted that there is a life threat to the respondent at Warangal. It is not uncommon to take this type of defences more particularly in matrimonial matters. The apprehension of the respondent is not supported by any material much less cogent and convincing material.

5. The petitioner has been residing in Warangal at her parents' house. The respondent is permanent resident of Karimnagar and working as Government Doctor in Huzurabad. The distance between Huzurabad and Warangal is only 35 KMs. It is not the case of the respondent that the petitioner has sufficient means to attend Family Court at Karimnagar for each and every date of adjournment. In this type of cases, the court has to take into consideration the hardship likely to be caused to the parties to the proceedings. As rightly pointed out by the learned counsel for the petitioner, the petitioner may face some difficulty to attend Family Court at Karimnagar. Three matters are pending between the parties before the courts at Warangal. Invariably, the respondent has to attend the courts at Warangal in other cases.

6. At this juncture, learned counsel for petitioner has drawn the attention of this court to the decision in **V.Sailaja v V.Koteswara Rao**. Para 8 reads as follows:

8. Having heard the learned Counsel for both parties and having due regard to the law laid down by the Apex Court in these matters, I am of the considered view that in matters concerning the transfer of matrimonial cases, it is the convenience of the wife which has to be taken into consideration by the Courts (see **Rachna Kanodia v. Anuk Kanodia**, 2001 (7) Supreme 96, and **Sumita Singh v. Kumar Sanjay**, AIR 2002 SC 396). Thus, in view of the law laid down by the Apex Court in the aforementioned cases, the O.P. filed by the respondent (husband) i.e., O.P. No. 416 of 2000 deserves to be transferred from the file of the Family Court, Vijayawada, to the Senior Civil Judge's Court, Vizianagaram, where the O.P. filed by the petitioner for restitution of conjugal rites is pending.

As per the principle enunciated in the case cited supra, the court has to take into consideration inconvenience likely to be caused to the wife while deciding transfer petitions.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to

transfer O.P.No.47 of 2013 from the file of the Judge, Family Court, Visakhapatnam to the file of the Judge, Family Court, Warangal.

8. Accordingly, the Transfer Miscellaneous Petition is allowed. O.P.No.47 of 2013 is withdrawn from the file of the Judge, Family Court, Karimnagar and transferred to the file of Family Court, Warangal for disposal in accordance with law. As a sequel, miscellaneous petitions, if any filed in this civil miscellaneous petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.06.2015.

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