

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.CMP.No.650 of 2015

ORDER:

This Transfer CMP is filed to withdraw OP.No.45 of 2015 from the file of Family Court, West Godavari District at Eluru and transfer the same to the Court of Senior Civil Judge, Machilipatnam to be tried along with HMOP.No.136 of 2013.

The case of the petitioner is that her marriage with the respondent was performed on 26.01.2012 at Medical Association Hall, Machilipatnam as per Hindu rites and customs; that after the marriage the petitioner joined the company of the respondent and that after six months, the respondent and his family members started harassing the petitioner for additional dowry. It is stated that ultimately the petitioner was necked out from the matrimonial home and thereafter, as the petitioner has no other go, she is staying with her parents at Machilipatnam and also lodged a police complaint against the respondent and his family members and that subsequently the police registered a case in Crime No.34 of 2013 under Section 498-A IPC. It is also stated that the petitioner also filed HMOP.No.136 of 2013 on the file of Senior Civil Judge, Machilipatnam under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights and also maintenance Case in MC.No.25 of 2013 on the file of

II Additional Judicial First Class Magistrate at Machilipatnam seeking maintenance. It is further stated that the respondent is also appearing and contesting the aforesaid cases filed by the petitioner. Meanwhile, the respondent filed OP.No.45 of 2015 on the file of Family Court, West Godavari District at Eluru, seeking dissolution of the marriage. The grievance of the petitioner is that

she cannot travel all the way from Machilipatnam to Eluru for defending the OP filed by the respondent as she has no male assistance to move from her place to Eluru and as such, field the present Transfer CMP.

Though, notice is served, no counter is filed on behalf of respondent and the aforesaid averments made by the petitioner were uncontraverted.

The aforesaid facts mentioned by the petitioner goes to show that the petitioner instituted MC.No.25/2013 for maintenance and HMOP.No.136/2013 seeking restitution of conjugal rights and at a later point of time the respondent instituted OP.45 of 2015 for grant of divorce and that the OP.No.136 of 2013 and OP.No.45 of 2015 have to be tried together to avoid conflicting Judgments. More so, the respondent is contesting the cases filed by the petitioner at Eluru. Further, the Apex Court in ***Sumita Sing v. Kumar Sanjay and another***^[1] held that in transfer of matrimonial proceedings initiated by the husband against wife, it is the convenience of wife that has to be looked at.

Further, as per Section 21-A(2)(b) of the Hindu Marriage Act, 1955 relied on by the petitioner it was held as follows;

“21-A:- Power to transfer petition in certain cases:

(2) In a case where sub-section (1) applies;-

- (a) If the petitions are, presented to the same District Court, both the petitions shall be tried and heard together by that District Court;
- (b) If the petitions are presented to different District Courts, the petition presented later shall be transferred to the district Court in which the earlier petition was presented

and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

A reading of the aforesaid section makes it clear that the petition filed at a later point of time shall be transferred to the District Court in which the earlier petition was presented.

In view of the above facts and circumstances, I deem it proper to transfer OP.No.45/2015 from the file of Family Court, West Godavari at Eluru, to the Court of Senior Civil Judge, Machilipatnam.

Accordingly, the Transfer CMP is allowed and OP.No.45 of 2015 pending on the file of the Judge, Family Court, West Godavari District at Eluru is transfer to the Court of Senior Civil Judge, Machilipatnam to be tried along with HMOP.No.136 of 2013. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the transfer petition, shall stand closed.

A.RAJASHEKER REDDY, J

31.12.2015

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[\[1\]](#) AIR 2002 SUPREME COURT 396