

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

TR.CMP.No.400 OF 2015

ORDER

This transfer petition is filed seeking transfer of H.M.O.P.No.46/2015 on the file of the Family Court, Rajahmundry to the Family Court, Visakhapatnam to be tried along with O.P.No.846/2015 on the file of the Family Court, Visakhapatnam.

The gist of the averments in the affidavit filed in support of the transfer petition is as follows:

The petitioner went to Australia for higher studies and subsequently acquired Australian Citizenship. Her marriage with the respondent was initially performed at Brisbane, Australia on 05.08.2011 and later their marriage was again performed in India as per Hindu rites and customs at Visakhapatnam on 09.11.2011 and both of them returned to Australia. It is the case of the petitioner that respondent developed hostile attitude towards her and started complaining about her. When both the petitioner and the respondent came to India to attend the marriage of petitioner's brother, the respondent stayed back in India and did not go with the petitioner to Australia. The respondent filed HMOP No.46 of 2015 on the file of Family Court, Rajahmundry seeking divorce making certain allegations on the petitioner. The petitioner filed O.P.No.846 of 2015 on the file of Family Court, Visakhapatnam seeking restitution of conjugal rights. Since the petitioner is staying in Australia, she executed GPA in favour of her father to represent her in the Court of law. It is the plea of the father of the petitioner, who is the GPA holder of the petitioner, that he is suffering with cardiac and old age problems and that his wife also underwent cardiac surgery and that it would be difficult for him to travel from Visakhapatnam to Rajahmundry to attend the Court proceedings in HMOP No.46 of 2015, and hence, he prays the Court to transfer HMOP No.46 of 2015 to the Family Court at Visakhapatnam so that it can be tried along with O.P.No.846 of 2015.

Counter is filed by the respondent stating that the transfer petition is not maintainable since the GPA holder cannot maintain a petition in matrimonial matters arising under the Hindu Marriage Act as well as the provisions of the

Family Courts. It is also stated that since the petitioner has been harassing the respondent with the acts of cruelty, the respondent has filed H.M.O.P.No.46/2015 on the file of Family Court, Rajahmundry in the 1st week of March, 2015 under Section 13 of Hindu Marriage Act for divorce and the same is pending. The respondent and the petitioner last stayed together at Rajahmundry. It is also stated that though the petitioner is the citizen of Australia, she has to come down to India to defend the suits, as such it does not make any difference if both the OP's are tried at Visakhapatnam or Rajahmundry. After filing of H.M.O.P.No.46 of 2015 in the month of March, 2015, the petitioner filed O.P.No. 846 of 2015 for Restitution of Conjugal Rights as a counter blast and therefore, there are no grounds for transfer and sought for dismissal of the transfer petition.

Sri G.Ram Gopal, learned counsel for the petitioner submits that it is the convenience of the wife that has to be taken into account while considering the transfer petition in matrimonial matters and even for defending and prosecuting O.P.No.846/2015, the petitioner has to stay with her parents. If H.M.O.P.No.46 of 2015 is tried with O.P.No.846 of 2015, it will be convenient for the petitioner to defend herself and it is also convenient for her father to prosecute both the O.P.s at Visakhapatnam.

On the other hand, Sri B.Anjaneyulu learned counsel for the respondent submits that the GPA holder cannot depose for principal in respect of which he does not have personal knowledge of the parties, mainly in cases of matrimonial disputes. He also submits that the basis for filing both the O.P.s i.e., one for Restitution of Conjugal Rights and one for divorce is with regard to the incidents happened in Australia and petitioner and respondent have to depose about the facts as a witness by themselves and the same cannot be deposed by GPA i.e., the father of the petitioner. In support of his contentions he relied on ***D.Vijayalakshmi v. T.K. Vijay Kumar, Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd and others*** and ***Binji Mahonari v. Kethinedi Venkata Subba Rao***.

In this case, though admittedly petitioner is the citizen of Australia and she is residing in Australia, she has to necessarily come down to India for giving evidence, if it is required. More so, O.P.No.846 of 2015 is filed showing

her father as GPA and her father is residing at Visakhapatnam, who is aged about 61 years and his wife underwent operation. Further, both the O.P.s have to be tried together to avoid conflicting decisions because if O.P. filed for Restitution of Conjugal Rights is allowed, O.P. filed for divorce has to be dismissed and vice versa. As such, there is no other go except trying both O.Ps. together.

No doubt decisions cited by the learned counsel for the respondent show that they are on the point that G.P.A cannot depose in the matters in respect of which only principal have personal knowledge. But the fact remains that petitioner has to come down to India for prosecuting her O.P. or O.P. filed by the respondent and she has to stay at her parent's place i.e., Visakhapatnam and it will be convenient for her if OP filed by the respondent is transferred to Family Court at Visakhapatnam to be tried along with OP.No.846/2015 filed by her. The Apex Court in ***Sumita Singh vs. Kumar Sanjay and another*** held that in transfer of matrimonial proceedings initiated by the husband against the wife, it is the convenience of the wife that has to be looked at. In this case, since the O.P. filed by the petitioner and the O.P. filed by the respondent have to be tried together to avoid conflicting decisions, I deem it appropriate to allow this transfer petition.

Accordingly, the transfer petition is allowed and H.M.O.P.No.46 of 2015 on the file of the Family Court, Rajahmundry is transferred to the Family Court Visakhapatnam to be tried along with O.P.No.846 of 2015. However, in both the cases, the presence of the respondent at Family Court, Visakhapatnam is dispensed with in the proceedings except for reconciliation and cross-examination. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 13.11.2015

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