

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.264 of 2015

ORDER:

This petition is filed under Section 24 CPC to withdraw O.P. No.124 of 2015 from the file of Family Court, City Civil Courts, Hyderabad and transfer the same to the District Court, Mahabubnagar, for disposal in accordance with law.

2. Heard the learned counsel for both the parties and perused the affidavit filed on behalf of the petitioner and the counter filed on behalf of the respondent.

3. The marriage of the petitioner was performed with the respondent on 29.6.2008 at Hyderabad as per Muslim rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, on 24.06.2011 the petitioner gave birth to a male child, who is named as Waqaas Ahmed. The petitioner filed M.C. No.8 of 2015 on the file of the Judicial First Class Magistrate, Mahabubnagar claiming maintenance for the minor. The respondent filed O.P. No.124 of 2015 on the file of the Family Court, City Civil Courts, Hyderabad, for custody of the minor.

4. Due to disputes, the petitioner along with her son has been residing at her parents' house at Mahabubnagar. As per the averments made in the petition, the respondent gave divorce to the petitioner on 16.6.2012 behind her back and deposited Iddat amount of Rs.10,000/-. It is an admitted fact that Waqaas Ahmed has been residing at Mahabubnagar. It is needless to say that the court has to take into consideration the welfare of the minor regardless of the legal rights of the parties to the proceedings. For better appreciation of rival contentions, it is not out of place to extract hereunder Section 9(1) of Guardian and Wards Act, which reads as follows:

9. Court having jurisdiction to entertain application

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

A perusal of Section 9(1) of the Act clearly demonstrates that for custody of the minor, petition has to be made to the District Court within whose jurisdiction the minor is ordinarily residing. Admittedly, Waqaas Ahmed has been residing along with his mother at Mahabubnagar.

5. Having regard to the facts and circumstances of the case and also the scope of Section 9(1) of the Guardian and Wards Act, I am of the considered view that the matter can be transferred to the Family Court, Mahabubnagar.

6. Accordingly, the Transfer CMP is allowed. O.P. No.124 of 2014 is withdrawn from the file of Family Court, City Civil Courts, Hyderabad, and transferred to the file of Family Court, Mahabubnagar, for disposal in accordance with law. As a sequel, miscellaneous petitions, if any pending in this transfer petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.7.2015.
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