

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

TRANSFER C.M.P.NO.649 OF 2015

ORDER:

This Transfer C.M.P. is filed by the petitioner-wife against the respondent-husband for transfer of H.M.O.P.No.158 of 2014 pending on the file of Additional Senior Civil Judge, Tenali to the Family Court, Ranga Reddy, which was instituted by the respondent-husband for grant of divorce against her.

The case of the petitioner is that her marriage with the respondent took place on 26.09.2008 and they lived happily for some time. Thereafter, the respondent started harassing the petitioner and filed H.M.O.P.No.158 of 2014 for grant of divorce. As the respondent deserted the petitioner, she did not like to stay at Tenali and in the month of December 2013, she came to Hyderabad for further studies and also to write competitive examinations. The petitioner is not an earning member of the family and depending on her parents for day-to-day expenditure. Though the petitioner filed interim application under Section 23 of the Hindu Marriage Act for interim maintenance, Advocate fee and day-to-day transport expenditure to attend the case, the respondent is intentionally

dragging on the matter. It is also the case of the petitioner that she has no security to go to Tenali of Guntur District to attend the said H.M.O.P., as the henchmen of the respondent are following her and there is threat to her life and the petitioner is unable to pay court fee at Tenali, as she is facing financial problems. Therefore, she sought for transfer of H.M.O.P.No.158 of 2014.

In the counter affidavit filed by the respondent, he denied the allegations made by the petitioner stating that she is having links with 'Sivasena'. After leaving the matrimonial home in February 2010, she came to Hyderabad and moving with 'Sivasena. The petitioner is doing job at Hyderabad and use to come to her parents' house at Tenali and she received notices at Tenali. If the matter is transferred, it is difficult for him to get witnesses from Tenali to Hyderabad. His father is an agricultural cooly and he is doing painting work and the same is not sufficient for his maintenance and their marriage was performed without the consent of her parents and the marriage photos also show that her parents did not attend the marriage function.

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

The learned counsel for the petitioner reiterated the submissions in the pleadings and relied on a judgment of the Supreme Court in SEEMA VS. RAKESH KUMAR^[1] and also a decision of the Apex Court in SUMITA SINGH VS. KUMAR SANJAY AND ANOTHER^[2] wherein it was held that while transferring matrimonial proceedings initiated by the husband, the convenience of wife must be looked at.

On the other hand, the learned counsel for the respondent submits that the petitioner is a permanent resident of Tenali and her parents are also residing at Tenali and there is a threat to life of respondent, if H.M.O.P.No.158 of 2014 is transferred to Hyderabad. He also submits that it is difficult for him to get the witnesses from Tenali. The learned counsel placed reliance on the decisions of the Supreme Court in NEELAM BHATIA VS. SATBIR SINGH BHATIA^[3], MEENAKSHI VS. MUKESH KUMAR^[4] and the decision of this Court in ANNAVARAPU DHANARAJ VS. ANNAVARAPU MANIKYAM AND OTHERS^[5].

The fact that the petitioner is a permanent resident of Tenali is not in dispute and the Aadhar card produced by the

respondent goes to show that the petitioner is a permanent resident of Tenali and her parents also are residents of Tenali. The said H.M.O.P. is filed in the year 2014 and it is stated that the same is ripe for trial. Though the learned counsel for the petitioner produced the identity card showing the address of the petitioner at Hyderabad, her parents are permanent residents of Tenali and the petitioner is also staying with them. The respondent states that there is threat to his life and he also states that as he is a painter, he cannot travel to Hyderabad by spending huge amounts. In Annavarapu Dhanaraj's case (Supra-5) this court in para 19 held as follows:

“Coming to the merits of the matter, the relationship between the petitioner and the 1st respondent appears to be strained to the level of incompatibility. Though it is not uncommon that spouses live separately, on account of trivial differences also, the nature of allegation made by the petitioner is such that the threat perception expressed by him cannot be dismissed as without basis. Normally, this Court would lean in favour of the convenience of woman spouses and minor children in the context of identifying the forum for adjudication. The facts of the present case warrant a balanced aat between the two extremes. It is felt that the transfer of the MC to the Family Court, Vijayawada, would meet the ends of justice”.

Taking into account the fact that the said O.P. is ripe for trial, it is not possible to transfer the same to the file of Judge,

Family Court, Ranga Reddy District.

In Neelam Bhatia's case (Supra-3) the Apex Court at para 3 held as follows:

“Learned counsel for the respondent husband resisted this petition stating that the proceedings were initiated in the year 2001; the case has reached the stage of evidence; pleadings having been completed; at this stage, it will not be appropriate to allow the transfer petition. He also added that the petitioner has filed some cases at Kolkata after the respondent filed the Hindu marriage petition aforementioned. The learned counsel, however assured that the respondent shall cooperate with the proceedings to go on without dragging the proceedings”.

In this case, the petition is ripe for trial and more so, both of them are expressing threats to their life. As such, as held by the Supreme Court in Annavarapu Dhanaraj's case (Supra-5) H.M.O.P.No.158 of 2014 can be transferred to some other place where it is convenient to both the parties. The Apex Court in Sumita Singh's case (Supra-2) held that while transferring the matrimonial proceedings initiated by the husband, the convenience of wife must be looked at. But at the same time, convenience of witnesses has to

be taken into account. In this case, it is stated by the respondent that the petitioner is staying at Hyderabad. Except the said allegation, no proof is filed to show that she is staying at Hyderabad.

In view of the same, in the interest of both the parties, H.M.O.P.No.158 of 2014 pending on the file of Senior Civil Judge Court, Tenali, is transferred to the Family Court, Vijayawada, which is convenient to both the parties.

Accordingly, the transfer petition is disposed of. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.16.11.2015

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[\[1\]](#)) LAWS (SC)-2001-4-107

[\[2\]](#)) AIR 2002 SC 396

[\[3\]](#)) (2004) 13 SCC 436

[\[4\]](#)) (2004) 13 SCC 497

[\[5\]](#)) 2001(5) ALD 696