

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TR.C.M.P.Nos.489 and 536 of 2013 and 140 of 2014

COMMON ORDER:

Tr.C.M.P.No.489 of 2013 is filed by the wife under Section 24 C.P.C., seeking for withdrawal of O.P.No.895 of 2012 from the file of the Family Court, City Civil Court, Hyderabad, and to transfer the same to the file of the Family Court, Visakhapatnam.

2. Tr.C.M.P.No.536 of 2013 is filed by the husband to withdraw F.C.O.P.No.66 of 2012 from the file of the Family Court, Visakhapatnam and transfer the same to Family Court, Hyderabad.

3. Tr.C.M.P.No.140 of 2014 is filed by the husband to withdraw G.O.P.No.937 of 2012 from the file of the Judge, Family Court – cum – V Additional District Court, Visakhapatnam, and transfer the same to Family Court, Hyderabad.

4. The issue involved in all the matters is one and the same and the parties are also one and the same, hence, I am inclined to dispose of these three matters by passing this common order.

5. The parties will be referred to as they are arrayed in O.P.No.489 of 2013 for the sake of convenience.

6. The facts leading to filing of the present petitions are briefly as follows: The marriage of the petitioner was performed with the respondent on 26.11.2013 at Kavali of Nellore District as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead happy marital life. The petitioner and the respondent lived together for some time at Nellore, Hyderabad and Visakhapatnam. Out of their lawful wedlock, the petitioner and respondent were blessed with a son and a daughter, who are now aged about 11 years and 9 years respectively. The petitioner has been working as Assistant Professor in Andhra University, Visakhapatnam. The respondent has been doing civil contracts at

Hyderabad. The petitioner and respondent lived together happily up to 2011. Bad weather prevailed in the family life of the petitioner and respondent. On 11.01.2012 the respondent filed F.C.O.P.No.66 of 2012 on the file of Family Court, Visakhapatnam for dissolution of marriage between them. In the month of July 2012, the petitioner filed O.P.No.937 of 2012 seeking custody of the children on the file of Family Court, Visakhapatnam. The respondent filed O.P.No.895 of 2012 on the file of Family Court, Hyderabad, seeking custody of the children. C.C.No.591 of 2012 is also pending on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam between the parties. Petitioner filed one transfer petition, i.e., Tr.C.M.P.No.489 of 2013, whereas, respondent filed two transfer petitions, i.e., Tr.C.M.P.Nos.536 of 2013 and 140 of 2014. Both parties opposing the transfer petitions filed by other party.

7. Learned counsel for the petitioner/wife submitted that it is very difficult for the petitioner to attend the Court at Hyderabad. Learned counsel for the respondent/husband submitted that being a contractor, it may not be possible for the respondent to attend the Court at Visakhapatnam. There is no dispute between the parties with regard to their relationship. Admittedly, the children are residing along with their father, i.e., the respondent. While deciding this type of petitions, the Court has to take into consideration the inconvenience as well as the hardship likely to be caused to the parties to the proceedings. It is not uncommon to make allegations and counter allegations against each other in family matters in order to gain the sympathy of the Court. Whether the respondent has forcibly taken the custody of the children or not, is a question of fact to be determined in Guardian OP Nos.895 of 2012 and 937 of 2012. It is needless to say that the Court is not supposed to express any opinion touching the merits of the main case while deciding the transfer petitions. Therefore, I am not inclined to express any opinion touching the merits of the main cases. The Court has to confine itself to the convenience or inconvenience likely to be caused to the parties to the proceedings. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner to travel from Visakhapatnam to Hyderabad on each and every date of adjournment. The distance between Visakhapatnam and Hyderabad is nearly 750 kms. Being a professor, it may not be possible for the petitioner to obtain leaves frequently. The respondent is not a Government employee. The respondent need not take permission of anybody to go to Visakhapatnam unlike the petitioner. The fact

remains that the respondent himself invoked the jurisdiction of Family Court, Visakhapatnam, by filing F.C.O.P.No.66 of 2012 for dissolution of marriage between them. At the earliest point of time, the respondent felt that the Courts at Visakhapatnam are having jurisdiction to resolve the disputes between them. F.C.O.P.No.66 of 2012 is pending on the file of Family Court, Visakhapatnam, O.P.No.937 of 2012 is pending on the file of Family Court, Visakhapatnam and C.C.No.591 of 2012 is pending on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam. Invariably, the respondent has to visit Visakhapatnam even to prosecute the case filed by him way back in the year 2012. If O.P.No.895 of 2012 is not transferred, untold hardship and inconvenience likely to be caused to the petitioner is more when compared to the respondent.

8. To substantiate the arguments, the learned counsel for the petitioner has drawn my attention to the following decisions.

1. T.Gayatri Devi v. Dr. Tallepaneni Sreekanth, wherein the Hon'ble Apex Court held in Para No.4 as under:

“4.....The learned Single Judge has completely overlooked the implication of this view as on the one hand the appellant-wife would be expected to contest the divorce proceeding to her detriment and at the same time would have to undertake the journey from Kakinada to Hyderabad which is bound to affect discharge of her professional duties where she is working as apart from the journey she would also have to seek leave which surely would affect her performance in the company further and put her job at risk. The import of the order clearly is that on the one hand the appellant-wife should live alone, maintain herself by living at her parents place and on the top of it give more attention to contest the divorce proceeding rather than looking to her job on which she is surviving in absence of any support from her husband who not only seeks a decree of divorce but also at convenience by choosing a place of his choice to secure a decree of divorce.”

2. Rachna Kanodia v. Anuk Kanodia, wherein the Hon'ble Apex Court held as under:

“In a transfer petition for transfer of matrimonial proceedings the convenience that has to be prevail is the convenience of wife and the issue of marriage.”

3. Sumita Singh v. Kumar Sanjay and another, wherein the Hon'ble Apex Court held at Para No.3 as under:

“3. It is the husband’s suit against the wife. It is the wife’s convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.”

As per the principle enunciated in the cases cited supra, the Court has to take into consideration inconvenience likely to be caused to the wife while deciding transfer petitions. The facts of the case on hand are almost similar to the facts of the case in **Sumita Singh**’s case (3rd supra).

9. Learned counsel for the respondent submitted that the presence of the respondent may be dispensed with on each and every date of adjournment. Even if the presence of the respondent is dispensed with on each and every date of adjournment, it may not cause any prejudice to the petitioner.

10. Accordingly, Tr.C.M.P.No.489 of 2013 is allowed and O.P.No.895 of 2012 is withdrawn from the file of the Family Court, Hyderabad and transferred to the file of the Family Court, Visakhapatnam, for disposal in accordance with law. However, the presence of the respondent/husband in F.C.O.P.No.895 of 2012, which is pending on the file of Family Court-cum-V Additional District Judge, Visakhapatnam, is dispensed with on each and every date of adjournment. He shall appear before the Family Court, Visakhapatnam in O.P.No.895 of 2012 as and when his presence is so required. Tr.C.M.P.Nos.536 of 2013 and 140 of 2014 are dismissed. As a sequel, miscellaneous petitions, if any filed in these civil miscellaneous petitions, shall stand closed.

T.SUNIL CHOWDARY, J

Date:05.06.2015.

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