

HON'BLE SRI JUSTICE S. RAVI KUMAR

TRANSFER C.M.P.No.227 of 2014

ORDER :

This petition is filed to transfer M.C.No.198 of 2010 from the file of Family Court, Vijaywada, to Additional Family Court, Visakhapatnam, to be tried along with O.P.No.264 of 2013.

2. Petitioner is husband and he is represented by General Power of Attorney i.e., his father, as petitioner is residing out side India. It is contended in the affidavit filed in support of transfer C.M.P. that O.P.No.264 of 2013 which is filed by petitioner for custody of the minor is pending before Additional Family Court, Visakhapatnam and M.C.No.198 of 2010 filed by respondent-wife is pending at Vijaywada and that wife filed Transfer C.M.P.No.294 of 2013 to transfer O.P.No.264 of 2013 from Visakhapatnam to Vijaywada and the said petition was dismissed on 22.07.2013. It is further contended wife filed M.C. at Vijaywada only to humiliate petitioner and petitioner is a stranger to Vijaywada and his life is at risk at Vijaywada and that Vijaywada Court has no jurisdiction. It is contended to avoid conflicting judgments, M.C. pending on the file of the Family Court, Vijaywada may be transferred to Additional Family Court, Visakhapatnam, to be tried along with O.P.No.264 of 2013.

3. Other side opposed the petition and filed counter disputing the affidavit averments of petitioner and

contended that this transfer C.M.P. is not maintainable. It is further contended that wife filed transfer C.M.P.No.295 of 2013 to withdraw O.P.No.262 of 2013 filed by husband for divorce from Visakhapatnam and to transfer the same to Vijaywada to be tried along with M.C.No.198 of 2010 and that the said petition is allowed on 02.09.2013 and on the basis of order of this Court, O.P.No.262 of 2013 was transferred from Visakhapatnam Court to Vijaywada Court and present relief would amount to defeat the relief granted in the earlier transfer C.M.P., therefore, present petition is not maintainable. It is further contended that petitioner is intentionally dragging proceedings to avoid payment of maintenance and the allegation of attack and life threat are only created for the purpose of transfer C.M.P. and there is no truth in it.

4. No arguments are advanced on behalf of petitioner.

5. Advocate for respondent submitted that the request of respondent herein divorce O.P. was transferred from Visakhapatnam to Vijaywada to be tried with M.C. and if M.C. is transferred, it would defeat the purpose of earlier order, therefore, present petition is not maintainable. He further submitted as the presence of respondent herein is dispensed with in the earlier transfer C.M.P.No.294 of 2013, wife has not challenged that order and that there are no grounds for transferring the guardian O.P. and the petition is liable to be dismissed.

6. I have perused the material and also earlier order of this Court in transfer C.M.P.No.295 of 2013. As per the

orders of this Court, divorce O.P. filed by husband was withdrawn from Visakhapatnam Court and transferred to Vijaywada Court to be tried along with M.C.No.198 of 2010. Now, husband filed this petition to transfer that M.C.No.198 of 2010 to Visakhapatnam, to be tried along with guardian O.P. When this Court ordered transfer of divorce O.P. filed by husband, considering the contentions of both parties that both M.C. and divorce O.P. have to be tried by one Court, now the request of petitioner to separate one proceedings i.e., M.C. and transfer the same to Visakhapatnam Court would amount to making the earlier order of this Court redundant. As rightly pointed out by advocate for respondent, divorce O.P. and the maintenance case have to be tried by one Court and the findings in one case are binding on the other case. Considering that only, this Court accepted the request of wife and withdrawn divorce O.P. from Family Court, Visakhapatnam and transferred to Vijaywada.

7. Though petitioner attributed that there is a life threat for him at Vijaywada, nothing is on record to support the said contention. Further, as seen from the material, husband is not in India and only his father, on the basis of GPA given to him, is prosecuting the proceedings, therefore, considering all these aspects, I am of the view that present petition is nothing but abuse of process of law and the same is liable to be dismissed with costs.

8. For these reasons, transfer C.M.P. is dismissed with

costs.

9. Miscellaneous Petitions, if any, shall stand closed.

S. RAVI KUMAR, J

23rd February 2015.

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