

HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.CIVIL MISCELLANEOUS PETITION No.21 of 2015

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ORDER:

This petition is filed to withdraw G.O.P.No.129 of 2013 from the file of Family Court-cum-V Additional District Judge, Tirupati and transfer the same to any other Court at Tirupati for disposal in accordance with law.

2. Petitioner herein is wife and respondent in G.O.P.No.129 of 2013, which is filed by husband seeking to declare him as legal guardian for the minor child Master Nikhil. According to affidavit of petitioner/wife, respondent/husband filed I.A.No.1418 of 2014 under Section 151 CPC seeking interim custody of child Master Nikhil and the trial Court in spite of request from petitioner to take up the main O.P., which is coming up for cross examination of PW.1, took up I.A. for disposal, even imposed costs and the attitude of the Court in not proceeding with the enquiry in the main O.P. made her to suspect and contended that she lost confidence in the Court, and on that ground, she sought transfer of G.O.P.No.129 of 2013.

3. Other side opposed application and filed counter and also additional material papers and contended that petitioner herein was involved in murder case and remanded to judicial custody and that made husband to file petition seeking interim custody to safeguard the welfare of male child suffering with microtia and the Court below granted ample opportunity to wife to file counter and contest that application and still the said I.A. is

pending because of stay granted by this Court. It is contended that the grounds urged for transfer are not valid and tenable and prayed for dismissal of the application.

4. Heard both sides.

5. Both side advocates submitted their arguments reiterating the contentions and rival contentions of their respective clients.

6. Now the point that would arise for my consideration is:

Whether there are any valid grounds for transfer of G.O.P.No.129 of 2013 from Family Court, Tirupati or to any other competent Court at Tirupati?

POINT:

7. The main grievance of petitioner/wife for approaching this Court seeking transfer of O.P. is that the trial Court insisted her to proceed with the enquiry in I.A.No.1418 of 2014, which is filed for interim custody of the child even though the main O.P itself is coming up for cross examination of PW.1. That was the only ground which made petitioner/wife to state that she lost confidence in the lower Court.

8. Advocate for respondent has produced docket proceedings of I.A.No.1418 of 2014, which reveals that husband filed I.A.No.1427 of 2014 and the same was allowed on 18.12.2014 by advancing I.A.No.1418 of 2014, which underwent several adjournments and the same was not disposed of till 02.02.2015. As seen from the docket proceedings, costs were imposed on petitioner herein in the said I.A.

9. Now as seen from the affidavit, imposing of costs made

wife to suspect bonafides of the Presiding Officer which cannot be accepted. The lower Courts do impose costs only when the party who took time either for filing counter or for getting ready in the matter fails to fulfil, costs are imposed. Simply because, costs are imposed, it cannot be said that the Court has made up its mind and that would cause injustice to the party against whom costs are imposed. Now whatever may be the reason for filing I.A.No.1418 of 2014 or the reason for filing transfer O.P., the fact remains that O.P.No.129 of 2013 and the I.As remained without any further progress.

10. Considering the contentions and rival contentions of both parties and the stage of G.O.P.No.129 of 2013, I feel that this O.P can be disposed of directing the Court below i.e., Family Court-cum-V Additional District Judge, Tirupati to take up the main O.P. and dispose of it within two (02) months from the date of receipt of this order without being influenced by any of the observations made by this Court or the fact that the wife approached this Court with a transfer petition.

11. Accordingly, this Transfer Miscellaneous Petition is ordered. No costs. Miscellaneous Petitions, if any pending, in this petition, shall stand closed.

S. RAVI KUMAR, J

Date: 09-03-2015

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