

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TR.CMP No.128 OF 2014

AND

TR.CMP No.273 OF 2014

COMMON ORDER:

1 Tr.CMP No.128 of 2014 is filed by the husband seeking to withdraw O.P.No.61 of 2014 from the file of the Judge, Family Court, City Civil Court, Hyderabad and transfer the same to the Court of the Judge, Family Court, Rajahmundry to be tried along with O.P.No.143 of 2013.

2 Tr.CMP No.273 of 2014 is filed by the wife seeking to withdraw H.M.O.P.No.143 of 2013 from the file of the Judge, Family Court, Rajahmundry and transfer the same to the Court of the Judge, Family Court, City Civil Court, Hyderabad to be tried along with O.P.No.61 of 2014.

3 Since the parties to these proceedings in both the petitions are one and the same, these two petitions are being disposed of by this common order.

4 For the sake of convenience, the parties will hereinafter referred to as arrayed in Tr.CMP No.273 of 2014.

5 The facts leading to the filing of the present petitions are, briefly, as follows:

6 The marriage between the parties was officiated on 24.08.2012 at Surya Kalyana Mantapam as per Christian Caste custom and traditions. The petitioner is permanent resident of Hyderabad, whereas, the respondent is permanent resident of Rajahmundry. Some bad weather prevailed in the matrimonial life of the parties which prompted them to approach the Court of law. The respondent / husband filed HMOP No.143 of 2013 on the file of the Judge, Family Court, Rajahmundry for restitution of conjugal rights, whereas, the petitioner / wife filed FCOP No.61 of 2014 on the file of the Judge, Family Court, Hyderabad seeking divorce by dissolving the marriage between them.

7 Heard the learned counsel for the petitioner/wife and the respondent / husband.

8 There is no dispute between the parties with regard to their relationship. Each

party is making allegations against the other. It is not uncommon to make allegations and counter allegations against each other in matrimonial cases in order to gain sympathy of the Court. The petitioner / wife filed O.P. for dissolution of marriage between them by granting divorce, whereas the respondent / husband filed HMOP for restitution of conjugal rights. The scope of the O.P filed by the wife is wider than the OP filed by the husband. At the time of arguments, the learned counsel for the petitioner submitted that the respondent is a contractor by profession and having source of income. A perusal of the record reveals that the petitioner is not an employee. Absolutely there is no material on record to establish that the petitioner is having sufficient source of income. As per the averments made by the petitioner / wife in her O.P, she is depending on the income of her parents. In such circumstances, it is not possible for the petitioner / wife to go all the way to Rajahmundry from Hyderabad to contest the matter filed by the respondent / husband. While deciding this type of petitions, the Court has to take into consideration the inconvenience or hardship likely to be caused to the parties to the proceedings. Simply because the marriage was performed at Rajahmundry that itself is not a valid ground to dismiss the transfer petition filed by the petitioner/wife without taking into consideration the other attending circumstances. In **Tallapudi Bharati Vijaya Lakshmi Vs. Lollugu Venkata Ranga Rao** this Court held at para No.5 as under:

5. The place of residence of a plaintiff in a suit is not at all recognized under the C.P.C, as a factor, to determine the forum. It is only in respect of proceedings under the Hindu Marriage Act (for short 'the Act'), that too, as regards the proceedings to be instituted by a woman spouse, that an exception is carved out. Section 19(iii)(a) of the Act enables the woman spouse to institute proceedings in the Court, within whose territorial jurisdiction she resides, as on the date of institution of the proceedings. Barring that, there is no occasion for a plaintiff in a suit to institute the proceedings in a Court, within whose territorial jurisdiction she resides, only on the basis of his or her residence, within the jurisdiction of that Court.

9 The cardinal principle for the exercise of power under this Section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. Even if the O.P. filed by the respondent / husband is transferred to Hyderabad, the same may not cause any prejudice to his rights.

10 Taking into consideration the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the Tr.CMP No.273 of 2014 filed by the petitioner / wife.

11 In the result, Tr.CMP No.273 of 2014 is allowed and the HMOP No.143 of 2013 pending on the file of the Judge, Family Court, Rajahmundry is withdrawn from the file of that Court and transferred to the Court of the Judge, Family Court, City Civil Court, Hyderabad for trial and disposal in accordance with law. However, the presence of the respondent / husband is dispensed with for each and every adjournment before the Judge, Family Court, City Civil Court, Hyderabad. But he shall appear before the said Court as and when his presence is required. Consequently, Tr.CMP.No.128 of 2014 filed by the respondent / husband is dismissed. As a sequel, miscellaneous petitions, if any, pending in these two Petitions shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 2nd June, 2015.

kvsn