

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.Nos.458 and 459 of 2014

COMMON ORDER:

Tr.C.M.P.No.458 of 2014 is filed under Section 24 C.P.C., to withdraw O.P.No.509 of 2012 from the file of the Family Court, Ranga Reddy District, at L.B.Nagar, and transfer the same to the file of the Family Court cum Additional District Judge, at Khammam, for disposal in accordance with law.

Tr.C.M.P.No.459 of 2014 is filed under Section 24 C.P.C., to withdraw O.P.No.513 of 2012 from the file of the Family Court, Ranga Reddy District, at L.B.Nagar, and transfer the same to the file of the Family Court cum Additional District Judge, at Khammam, for disposal in accordance with law.

2. The parties in both the transfer petitions are one and the same and therefore, both the petitions are disposed of by this common order. Heard both the counsels and perused the material available on record.

3. The marriage of the petitioner was performed with the respondent on 28.01.2007 at Khammam, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent at Hyderabad to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with a son – Hemnesh. The petitioner filed D.V.C.No.18 of 2013 on the file of the I Additional Judicial First Class Magistrate, Khammam, against the respondent. The petitioner also filed M.C.No.28 of 2013 on the file of the I Additional Judicial First Class Magistrate, at Khammam against the respondent seeking maintenance. The respondent filed O.P.No.509 of 2012 on the file of the Family Court, Ranga Reddy District, seeking custody of minor son. The respondent also filed O.P.No.513 of 2012

seeking dissolution of marriage between him and the petitioner.

4. Due to misunderstandings, the petitioner has been residing at Khammam at her parents' house along with her 5 years' old minor son – Hemnesh. Filing of maintenance petition itself indicates the financial position of the petitioner. It may not be possible for the petitioner to travel nearly 270 kilometers from Khammam to Hyderabad in order to prosecute the matters at Ranga Reddy without the assistance of one of the family members. Invariably, the respondent has to attend different courts at Khammam in view of pendency of Maintenance case and D.V.C. Even if the petition is allowed, the same may not cause any prejudice to the respondent. While disposing the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, the wife.

5. As per the principle enunciated in **V.Sailaja v V.Koteswara Rao**^[1], **Rachna Kanodia v. Anuk Kanodia**^[2], and **Sumita Singh v. Kumar Sanjay**^[3], the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

6. For better appreciation of rival contentions, it is not out of place to extract hereunder Section 9(1) of Guardian and Wards Act, which reads as follows:

9. Court having jurisdiction to entertain application

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

A perusal of Section 9(1) of the Act clearly demonstrates that for custody of the minor, petition has to be made to the District Court within whose jurisdiction the minor is ordinarily residing. Admittedly, Hemnesh has been residing along with his mother at Khammam.

7. Having regard to the facts and circumstances of the case, the principle enunciated in the cases cited supra as well as the scope of Section 9(1) of the Guardian and Wards Act, I am inclined to grant the relief sought by the petitioner.

8. Accordingly, the Transfer Civil Miscellaneous Petitions are allowed. G.O.P.No.509 of 2012 and O.P.No.513 of 2012 are withdrawn from the file of the Family Court, Ranga Reddy District, at L.B.Nagar, and transferred to the file of the Family Court cum Additional District Judge, Khammam, for disposal in accordance with law. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

Date:17.07.2015.

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[\[1\]](#) AIR 2003 AP 178 = 2003 (1) ALD 673 = 2003 (1) APLJ 441

[\[2\]](#) 2001(7) Supreme 96

[\[3\]](#) AIR 2002 SC 396