

HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.C.M.P.No.768 of 2015

ORDER:

This petition is filed to withdraw O.P.No.1094 of 2015 from the file of Family Court-cum-V Additional District Judge, Visakhapatnam and transfer the same to Senior Civil Judge, Machilipatnam, Krishna District.

2. Husband filed this petition. According to his affidavit, he filed HMOP No.94 of 2011 before Senior Civil Judge, Machilipatnam and obtained ex parte decree of divorce. He stated that he gave a complaint against respondent/wife regarding her attack in his office, for which, a crime was registered under Section 427, 448 and 506 IPC in I-Town police station, Visakhapatnam vide FIR No.7 of 2015 dated 08.01.2015. He further stated that he suffered serious heart problem and it was diagnosed as "Aortic Dissection" due to severe Blood Pressure resulted from emotional upsets caused by respondent. He stated that he was admitted in Apollo hospital on the night of 7th January and discharged on 16th January. He stated that he was so serious and kept in ICU for 5 days and was again admitted on 18th January and discharged on 22nd January, and for further treatment, he went to Chennai and was admitted there on 27th January and discharged on 29th January. He stated that doctors advised him that it is better to get diagnosed at AIMS, New Delhi or CMC Rayavellore for further medications. He stated that he has shifted to his residence in Machilipatnam, which is his native place and he was looked after by his parents and he is taking rest and occasionally going out for treatment and other works. He

stated that as doctors advised him not to get pressurized, he is not seriously taking care of his profession also. He stated that respondent filed O.P. at Visakhapatnam only to harass him and she has also filed a petition to set aside the ex parte decree for divorce at Machilipatnam, as such, she has come to Machilipatnam to defend that O.P. Therefore, in such a situation, it is just and necessary to transfer O.P from Visakhapatnam to Machilipatnam.

3. Respondent filed counter affidavit disputing the affidavit averments of petitioner and according to her affidavit their marriage was performed on 31.08.2001 at Mumbai and that it is a love marriage. She stated that after marriage, they lived at Chennai and Mumbai for a period of 6 years and finally they shifted their residence to Visakhapatnam. She further stated that petitioner used to work as Vice-President in ESSKAY Shipping at Visakhapatnam, subsequently, he established his own business under the name and style of Gangathri Shipping Company at Visakhapatnam and the office is situated near Rani Statue, Old Post Office, I Town, Visakhapatnam. She further stated that originally she is native of Mumbai and she cannot speak and read Telugu and petitioner used to go out for his business trips and used to live at Flat No.105, K.K.R. Residency, Pappulaveedhi, Kurupam Market, Visakhapatnam and she is presently residing in the same house. She stated that she made enquiries and came to know that petitioner filed HMOP No.94 of 2011 by showing her old address and notice was effected by way of paper publication in Telugu Daily news paper and for that she filed I.A.No.1354 of 2014 to set aside the ex parte decree and the same is pending. She stated that petitioner intentionally filed HMOP No.94 of 2011 before

Senior Civil Judge, Machilipatnam though they were residing together at the time of filing of the above OP. She further stated that as she is unable to maintain herself, she filed F.C.O.P.No.1094 of 2015 before Family Court, Visakhapatnam seeking maintenance and that she has also filed a complaint before Mahila Police Station, Visakhapatnam for the offence under Section 498-A IPC and the same is pending as Crime No.49 of 2015. She further stated that the present transfer petition is filed only to harass her and as petitioner is also resident of Visakhapatnam and doing business there but by showing incorrect address, he filed O.P at Machilipatnam. She stated that in fact she has to file a petition before this Court seeking transfer of HMOP No.94 of 2011 from Machilipatnam to Visakhapatnam, as her petition to set aside the ex parte decree is not yet decided, she did not take such step. For these reasons, she prayed for dismissal of the petition.

4. Heard both sides.

5. Advocate for petitioner submitted that petitioner is suffering with heart problem and to substantiate the same, he filed necessary medical record. He submitted that petitioner is not moving out from Machilipatnam and only for medical purpose, he is coming out and he has been looked after by his parents and it is difficult for him to travel upto Visakhapatnam for defending O.P filed by respondent/wife. He submitted that at least the presence of petitioner may be dispensed with as his Blood Pressure may rise whenever he appear before the Court at Visakhapatnam due to the attitude of respondent/wife.

6. On the other hand advocate for respondent opposed the petition and submitted that petitioner filed divorce OP by showing

wrong address and notice was published by substitute service, and only after knowing about that, respondent filed a petition to set aside that ex parte decree, and respondent is native of Mumbai and she cannot read and speak Telugu and she is not in a position to maintain herself, therefore she filed OP for maintenance if the same is transferred to Machilipatnam, it will be difficult for her as she cannot even meet the travel expenses. He further submitted that she could not file any transfer OP for transfer of divorce OP from Machilipatnam to Visakhapatnam, as ex parte decree is not yet set aside and I.A. No.1354 of 2014 is still pending.

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

Whether the request of petitioner/husband for transfer of FCOP No.1094 of 2015 from Family Court-cum-V Additional District Judge, Visakhapatnam to Senior Civil Judge, Machilipatnam, is legal, proper and correct?

POINT:

8. I have perused the material papers including the affidavit, counter affidavit of both parties. I have verified the medical record produced by petitioner. According to medical record, petitioner was admitted on 07.01.2015 and discharged on 16.01.2015. Admittedly petitioner gave a complaint to police against respondent herein for alleged incident dated 07.01.2015 which is registered as crime No.7 of 2015. As seen from the copy of FIR produced by advocate for respondent, petitioner gave his address in that FIR as resident of Visakhapatnam. According to this complaint, the alleged incident took place at 7.45 p.m. on 07.01.2015, which contradicts with the entry in medical record. There is no time at which petitioner said to have been admitted in hospital on 07.01.2015. Advocate for petitioner

submitted that petitioner was admitted on the mid night of 07.01.2015 i.e., on early hours of 08.01.2015, after giving complaint. But there is no supporting material for his submission, because no time is recorded in the medical record. Further as seen from the material, he was first admitted on 07.01.2015 and discharged on 16.01.2015 thereafter he was admitted on 18.01.2015 and discharged on 22.01.2015, and further, no record is filed to show about the treatment which was given to petitioner subsequent to his discharge on 22.01.2015. In the absence of any such record, the contention of petitioner that he is still in a serious health problem cannot be accepted.

9. It is well settled law that the Court has to take the convenience of wife into consideration while entertaining transfer petitions and only in exceptional cases the request of husband for transfer of case filed by wife to his choice would be considered. I do not find any compelling reasons to consider the request of petitioner/husband to withdraw the case filed by wife that too a maintenance case from Visakhapatnam to Machilipatnam.

10. As rightly pointed out by advocate for respondent divorce decree granted in favour of petitioner herein is still in force and OP is not restored, therefore respondent did not seek transfer of that case from Machilipatnam to Visakhapatnam.

11. Though advocate for petitioner submitted at least the presence of petitioner/husband may be dispensed with before Family Court, Visakhapatnam, I am not inclined to accept such request as there is no sufficient material to show the seriousness of the ailment.

12. For these reasons, I am of the view that request of

petitioner for transfer of OP from Visakhapatnam to Machilipatnam cannot be accepted and that there are no merits in the petition.

13. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Miscellaneous Petitions, pending in this petition, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 07-06-2016.

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