

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.Nos.192 & 718 of 2016

COMMON ORDER:

Transfer C.M.P.No.192 of 2016 is filed by the wife requesting to withdraw O.P.No.1348 of 2015 on the file of the Court of the Judge, Additional Family Court-cum-XV Additional District Judge, Miyapur, Ranga Reddy District, and transfer the same to the file of the Court of the learned Senior Civil Judge, Amalapuram, East Godavari District, for trial and disposal in accordance with the procedure established by law.

Transfer C.M.P.No.718 of 2016 is filed by the husband requesting to withdraw O.P.No.96 of 2016 on the file of the Court of the Senior Civil Judge, Amalapuram, and transfer the same to the file of the Court of the Judge, Additional Family Court-cum-XV Additional District Judge, Miyapur, Ranga Reddy District, for trial and disposal in accordance with the procedure established by law.

Since the parties in the two Petitions are wife and husband and as the issues involved for consideration in both the petitions are common and overlapping, both the petitions are heard together and are being disposed of by this common order.

2. I have heard the submissions of Smt. *E Parvathi Devi*, learned counsel for the petitioner in Transfer CMP No.192 of 2016 and respondent in Transfer C.M.P.No.718 of 2016, and Smt. *S Vani*, learned counsel for the petitioner in Transfer C.M.P.No.718 of 2016 and respondent in Transfer C.M.P.No.192 of 2016. The parties shall hereinafter be referred to as the 'wife' and 'husband' for the sake of convenience and clarity. I have perused the material record.

3. The case of the wife, which is relevant for consideration, in brief, is as follows: "The respondent is her legally wedded husband and their marriage was

solemnized on 29.05.2013 as per Hindu Rites and Customs at Honi Bhabha Function Hall, Dr. A.S.Rao Nagar, Hyderabad. The marriage was consummated. They have no children. At the time of the marriage, the husband was working as a Software Engineer at Bangalore. The wife stayed for a month at Hyderabad with the husband at his parents' residence. In the month of June 2013, they visited Tirupathi. The husband instead of spending time happily, insisted upon the wife to secure a job at Bangalore as early as possible as otherwise, he will lose huge amounts of money, which she would be getting towards salary. The wife was shocked with this type of money minded mentality of the husband, that too, within one month of marriage. Right from the day of marriage, the husband and his family members used to observe her very curiously by spying her every movement. While, the wife was taking vitamin tablets, the husband and his family members put number of questions and blamed her by making blatant allegations about her health. She was totally confused and shocked. In the month of July, 2013, the husband took her to Bangalore (his place of work) and set up family. As soon as she joined her husband, he pressurized her to make job trials. As she hails from a small town like Amalapuram, she requested her husband to give her some time to adjust herself to the environment of Bangalore. But, he did not cooperate. She also requested him to help her in searching for placement. The husband bluntly refused to do so and moreover abused her in filthy language that she is good for nothing and warned her that if she could not succeed in getting job on her own, he will go to any extent. The husband tortured her by pointing out each and every small incident and tried to blame her by saying that she was mentally sick. In this way, she was even blackmailed emotionally. Later on, she came to know that in a preplanned way and to just to get rid off her, the husband and his family members behaved like that. In the month of October 2013, while the wife was seriously searching for jobs, the husband went to UK on official work. The wife was dropped at her in-laws place at Hyderabad. During her stay there, her in-laws created many

scenes just to show that she was mentally unsound. During her stay at Hyderabad, she succeeded in getting a job. Her husband, who was also willing to stay at his parents' house, resigned his job at Bangalore after coming from UK and they started staying together along with her parents-in-law. As her job contract was over on 12.08.2015, the husband and his family members quarreled with her in a big way for not getting job extension. Further, in order to just prove that she was mentally sick, they took her to a psychiatrist by subjecting her to great pressure; however, except some common things, nothing else was elicited by the doctor. The husband and his family members threatened her with dire consequences and necked her out on 23.08.2015 by demanding her to sign on divorce papers. Having left with no other alternative, she sought shelter at her parents' place at A.Vemavaram, Amalapuram, East Godavari District, and is staying with them. The husband filed a petition for divorce in O.P.No.1348 of 2015 on the file of the Family Court, Ranga Reddy District, with false and frivolous allegations. Knowing fully well that the wife was staying in A.Vemavaram, Amalapuram, with her parents, to harass her, the husband gave her uncle's address for the purpose of creating jurisdiction at Hyderabad. She does not have any male support to attend on the date of each and every adjournment before the Additional Family Court, Ranga Reddy District, which is nearly 600 KMs away from her place of residence. There is also a threat to her from the husband and his family members and they are propagating that she is a mental patient. If O.P.No.1348 of 2015 pending on the file of the learned Judge, Additional Family court-cum-XV Additional District Judge, Miyapur, Ranga Reddy District, is not transferred, she will be put to great irreparable loss and hardship. She received notices in O.P.No.1348 of 2015 to A.Vemavaram address, Amalapuram. Hence, the Court of the learned Senior Civil Judge, Amalapuram, East Godavari, is having jurisdiction to entertain the OP. Hence, she is seeking transfer of OP 1348 of 2015 from the file of the Judge, Additional Family Court-cum-XV Additional District Judge,

Miyapur, Ranga Reddy District to the file of the Court of the learned Senior Civil Judge, Amalapuram.”

4. The case of the husband, which is relevant for consideration, in brief, is as follows: “His wife subjected him to cruelty. He filed a petition in O.P.No.1348 of 2015 on the file of the Family Court, Ranga Reddy District, seeking divorce and the same is now pending before the Additional Family Court, Miyapur. The wife received notices and entered appearance in the said matter. However, she had filed Transfer C.M.P.No.192 of 2016 before this Court seeking transfer of the petition filed by him stating that she is residing at Amalapuram. To circumvent the process of law and to further harass him, the wife filed a case for restitution of conjugal rights in O.P.No.96 of 2016 before the Court of Senior Civil Judge, Amalapuram stating that she is presently staying with her parents at Amalapuram. If her contention regarding her stay at Amalapuram is believed for a moment and his case is transferred, it would be highly inconvenient for him to attend to the case any of the Courts situated at East Godavari District and there will be a threat of losing his job and his loss of his job would affect not only his career but also the lives of his aged parents. That apart, he has reliable information that the wife is working at Hyderabad, but, she deliberately filed the O.P.No.96 of 2016 before the Senior Civil Judge Court, Amalapuram, just to create a ground for transfer of his case pending before the Family Court, Miyapur to Amalapuram Court. The wife did her B.Tech from 2006 to 2010 from Balaji Institute of Technology & Science, Warangal. After completion her graduation, she started working with HBL Power Systems Ltd., Hyderabad as Developer from April 2011 till May 2013 with Employee Code 59353, i.e., till the date of marriage. Again, the wife started working as Software Engineer at E Centric Solutions Private Limited from March 2014. Thus, it is clear that the wife was staying away from Amalapuram Town since 2006. Even after the marriage, the wife travelled alone to her native place for about 6 to 7 times. In her CV also, the wife gave her uncle’s address

at Dr.A.S Rao Nagar as shown in the cause title. The husband is ready to bear reasonable travel expenses of the wife, if she produces proof of travel from Amalapuram to Hyderabad, for the purpose of attending the case. If the wife's OP is not transferred from the Court at Amalapuram as sought for by him and he was made to run around the Courts at Amalapuram, which have no jurisdiction, he will suffer heavy and irreparable loss. Hence, it is just and necessary that O.P.no.96 of 2016 shall be transferred from the file of the Court of the learned Senior Civil Judge, Amalapuram, to the Court of the Judge, Additional Family Court, Miyapur, to be tried along with O.P.No.1348 of 2015."

5. In the counters of the wife and husband denied the allegations in the transfer petition filed by the opposite spouse and reiterated their respective cases.

6. The learned counsel for the parties reiterated the respective contentions of the parties.

7. Before proceeding further, it is profitable to first refer to the following decisions:

In Gayatri Mohapatra v. Ashit Kumar Panda (2003)11 SCC 731, the Supreme Court noted that the wife is a Director in a Company run by her mother and that she is used to travelling from place to place and observed that her incapacity to travel cannot be permitted to be stated as a ground to seek transfer of the husband's case.

In Teena Chhabra v. Manish Chhabra (2004) 13 SCC 411, the Supreme Court accepted the husband's offer to bear the expenses for the travel, boarding and lodging of the wife and dismissed her transfer petition filed on the ground that she had no source of income to travel.

In M. Svagami v. R. Raja (2005) 12 SCC 301, the Supreme Court disallowed the wife's transfer application by directing the husband to pay her litigation costs and also her expenses and those of her witnesses.

In Kanagalakshmi v. A. Venkatesan (2004) 13 SCC 405, the Supreme Court accepted the plea of the husband that he would bear the expenses, not only of the wife but also of her companion, for travel and stay at the place where the case was pending, and accordingly dismissed the wife's transfer petition. The same principle was reiterated in Priyanka Batra v. Manish

Batra (2005) 12 SCC 236; Kakali Pal v. Balai Chandra Pal (2005) 12 SCC 216; Anuradha Dutta v. Subash Chandra Dutta (2004) 13 SCC 694; Sarita Singh Alias Babli Baghel v. A.P. Baghel (2005) 12 SCC 376; Kamudi Aurora v. Surinder Pal Singh Aurora (2004) 13 SCC 634; and Gargi Konar v. Jagjeet Singh (2005) 11 SCC 446.

In Preeti Sharma v. Manjit Sharma (2005) 11 SCC 535, the Supreme Court observed that merely because the petitioner was a lady it did not mean that she could not travel to another place and that, at the highest, she could be paid expenses for her travel and stay.

In Premlata Singh and Ors. v. Rita Singh (2005) 12 SCC 277, the Supreme Court directed the transfer of the case taking into consideration the fact that the wife was undergoing treatment for kidney failure.

In Usha George v. Koshy George (2000)10SCC95, the Supreme Court held that it was not proper to transfer the case to any other Court as a number of hearings had already taken place in the Court where the case was already pending.

In Neelam Bhatia v. Satbir Singh Bhatia (2004) 13 SCC 436, the Supreme Court taking note of the fact that the case had progressed to the stage of trial disallowed the wife's transfer application, directing the husband to bear the travel and incidental expenses of the wife and her companion.

In Anindita Das v. Srijit Das (2006) 9 SCC 197, the Supreme Court found that leniency to ladies shown by the Court in transfer matters was being often misused and taken advantage of by women. The Supreme Court also observed that each petition is to be considered on its merit. On the facts of that case, the Supreme Court first noted that the grandparents were available to look after the six year old child and then taken note of the husband's offer to bear the expenses for the wife's and her companion's travel, and dismissed the wife's transfer application.

In Eluri Raji Reddy and Ors. v. State of Delhi and Anr. 2004CriLJ2555, the Supreme Court found that as the wife had a house in Andhra Pradesh and her parents were living there it would be proper to transfer the cases filed by her at Delhi to a Court in Andhra Pradesh as sought for by her husband.

In Meenakshi v. Mukesh Kumar (2004) 13 SCC 497, the Supreme Court accepted the statement made by the husband with regard to the safety and security of the wife and that he would bear her conveyance charges and disallowed the wife's transfer application.

In Lalita v. Kulwinder Kumar (2007) 15 SCC 667, the Supreme Court having not accepted the offer of the husband to pay all expenses for his wife's travel, ordered transfer of the husband's case from the Court at Ghaziabad to the Court at Ludhiana by allowing the wife's petition filed on the grounds that she is having school going children, who cannot be left behind alone, and that

she is suffering from certain ailment which required surgery and that she is not in a position to bear litigation and travel expenses.

In the decision in *Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi* (2005) 12 SCC 237, despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition.

In *Sumita Singh v. Kumar Sanjay and Another* (2001) 10 SCC 41, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at.

In *Sangeeta @ Shreya v. Prasant Vijay Wargiya* (2004) 13 SCC 407, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan.

In the Judgment of the Supreme Court in *Kulwinder Kaur v. Kandi Friends Education Trust* AIR 2008 SC 1333, while dealing with the power of the Court to transfer suits, appeals or other proceedings under Sections 24 and 25 of the Code, the Supreme Court held as under:

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for

transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

From a synopsis of the aforestated Judgments, it is clear that there is no rule of thumb that can be uniformly applied in cases of this nature. Each case would ultimately turn on its own peculiar facts and circumstances and must be dealt with accordingly.

8. One OP was filed by the wife for restitution of conjugal rights in a Court at Amalapuram and the other OP was filed by the husband for grant of divorce in the Additional Family Court at Miyapur. Considering the issues involved in the two cases, it is in the interest of both the parties that both the cases should be tried and disposed of by a single forum, be it the Senior Civil Court, at Amalapuram or the Additional Family Court, Miyapur. Therefore, the issue for consideration is as to which of the two Courts should be preferred.

9. Indeed, all the contentions of the parties are adverted to supra, in detail. This Court has to now consider the relevant contentions of the parties sans serious allegations traded by the parties as while making an order in a petition of this nature, this Court will not enter into the merits of the main matters and record any findings which will have a bearing on the issues involved in the main matters.

10. The case of the wife shorn of unnecessary details is as follows: She is aged about 26 years. She is presently staying at A.Vemavaram Post, Amalapuram Mandal, East Godavari District, along with her parents. She is not employed at present and she has no income or sources of income. She has no male support to attend on the date of each and every adjournment before the

Additional Family court, Ranga Reddy District, which is nearly 600 KMs away from her place of residence. There is a threat to her from her husband and his family members. The husband who is having knowledge that she is staying with her parents at Amalapuram, intentionally filed the OP for divorce in the Court at Miyapur only to harass her. She will be put to irreparable loss and hardship if her request for transfer of OP filed by her husband is not acceded to.

11. The case of the husband sans unnecessary details is as follows: He is working as a Software Engineer. It is highly inconvenient for him to attend the matter in any of the Courts at East Godavari. If he has to frequently undertake travel for the sake of attending the Court case at Amalapuram, there will be a threat of losing his job. His frequent absence from work will affect not only his career but also the lives of his aged parents. The wife had deliberately filed OP 96 of 2016 in the Senior Civil Court, Amalapuram, only in order to create a ground for transfer of the case filed by him to Amalapuram. He is ready to bear reasonable travel expenses of the wife, in case, she produces the relevant proof regarding her travel from Amalapuram to Hyderabad. If the case filed by him is transferred to the Court of the learned Senior Civil Judge, Amalapuram, he will suffer heavy and irreparable loss.

12. The wife specifically pleads physical inability to undertake travel from Amalapuram to Hyderabad, which is stated to be at a distance of about 600 Kms. In the Indian context an earning male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a non-earning female or a house wife. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. Though the husband in his counter made an offer to bear the travel expenses of his wife, the wife pleads that she has no male assistance to travel such a long distance of nearly 600 KMs. The husband also stated that there is a threat of losing his job if he is required to

frequently absent from duty for the sake of attending the Court case at Amalapuram. Though the wife voiced apprehensions with regard to her safety and the husband voiced apprehension with regard to the safety of his job, such allegations and counter allegations are not uncommon in matters of this nature; and such unsubstantiated allegations cannot be a decisive factor in this adjudication.

13. Further, in the case on hand, the wife's contention that notices in the OP filed by the husband were served upon her at her Amalapuram residential address is not in dispute. It is trite to note that the provision of Section 19 (iii-a) of the Hindu Marriage Act, 1955, as amended in the year 2003, postulates that in case, the wife is the petitioner, every petition under the said Act shall be presented to the District Court within local limits of whose ordinary civil jurisdiction she is residing on the date of the presentation of her petition. The wife's petition for restitution of conjugal rights which was filed under the provision of Section 9 of the said Act is pending before the Senior Civil Court, Amalapuram. As already noted, the **afore**stated provision of Section 19 of the Act, gives liberty to the wife to file a petition under the provisions of the said Act within the local limits of the Court where she is residing on the date of presentation of the petition for restitution of conjugal rights. Thus, the statute gives special status to the wife insofar as to the place of suing.

14. On the above analysis, this Court finds that the convenience of the wife should be preferred and shall prevail over the inconvenience, if any, which may be caused to the husband. Accordingly, this Court finds that sufficient cause is shown by the petitioner-wife for granting the relief claimed by her in her petition and that there is no merit in the petition filed by the husband.

15. In the result, the Tr.C.M.P No.192 of 2016 is allowed and O.P.No.1348 of 2015 is withdrawn from the file of Additional Family Court-cum-XV Additional District Court, Miyapur, Ranga Reddy District, and is transferred to the file of

the Senior Civil Court, Amalapuram, for trial, either simultaneously or jointly with O.P.No.96 of 2016 on the file of the Senior Civil Judge Court, Amalapuram, and disposal in accordance with the procedure established by law. As a sequel, Transfer C.M.P.No.718 of 2016 filed the husband shall stand dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

23rd December, 2016
RAR

