

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.455 of 2016

ORDER :

This is a wife's application under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw O.P. No.161 of 2014 on the file of the Court of the learned Principal Senior Civil Judge, Chittoor, and transfer the same to the Court of the learned Principal Senior Civil Judge, Kurnool, for trial and disposal in accordance with the procedure established by law.

I have heard the submissions of Sri Lakshmikanth Reddy Desai, learned counsel for petitioner, and of Sri S.V.Muni Reddy, learned counsel appearing for the respondent.

I have perused the material record.

The case of the petitioner-wife, which is relevant for consideration, in brief, is this: "After estrangement, she is residing along with her parents at Pyapili village of Kurnool District; she is having custody of a male child of about 4 years of age; she is a house wife; she has no income or sources of income; she is not in a position to undertake travel along with her young son; due to her said incapacity, lack of assistance and financial weakness she is not in a position to undertake travel and attend the case filed by the husband in a Court at a place which is away from the place of her residence; her husband is keeping company of one Bhargavi; she is staying with him in his house in Chittoor; the husband intentionally filed the instant OP for restitution of conjugal rights in the Principal Senior Court, Chittoor under Section 9 of the Hindu Marriage Act, 1955; when her brothers went to

resolve the issue at the time of reconciliation proceedings, a case was filed against her brothers under Section 324 read with section 34 of IPC and presently C.C.No.359 of 2013 is pending on the file of the Court of the learned III Additional Judicial Magistrate of First Class, Chittoor; In the circumstances, she is constrained to file the present application seeking transfer of husband's petition from the Principal Senior Civil Court, Chittoor to the Principal Senior Civil Court at Kurnool."

The case of the respondent/husband is in the nature of denial. His submissions relevant for consideration are as under: "The allegation that at the time of alleged reconciliation proceedings the wife was threatened with dire consequences if she continues the cases filed by her at Kurnool are false; the allegation that the respondent is addicted to bad vices and keeping company of a woman by name Bhargavi, are false; when the brothers of petitioner, who are running a medical agency at Tirupathi threatened the respondent with dire consequences, he was constrained to file a criminal case in C.C.No.359 of 2013; as he is living at B.N.R.Pet village, which is a very distant place from Kurnool, it is difficult for him to attend the Court at Kurnool; he has a life threat at Kurnool at the hands of the brothers of his wife; therefore, he will be put to hardship and inconvenience if his case is transferred to Kurnool."

The learned counsel for parties reiterated the respective contentions at the hearing.

Be that as it may. 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. Sivagami 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 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.

Now the point for consideration is –

Whether the petitioner-wife made out valid and sufficient grounds for withdrawal of O.P.No.161 of 2014 from the file of Principal Senior Civil Court, Chittoor and to transfer the same to the Court of Principal Senior Civil Court, Kurnool ?

POINT:

The wife is a house wife and is not gainfully employed and has no financial resources. She is having custody of a four year old child and is admittedly residing at her parents' place which is in Kurnool District,

whereas, the husband is a Doctor and Physiotherapist and is gainfully working at Chittoor. The wife specifically pleads financial weakness and physical inability to undertake journey from Kurnool to Chittoor more particularly in the light of the fact that she is having custody of a young boy. The distance between the two places is a considerable distance. In the Indian context an earning male person is certainly better placed as he can under take 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. The husband, in his counter, did not make an offer to bear the litigation, travel and incidental expenses of his wife and a companion, who may accompany her to Chittoor. Though the husband voiced apprehensions with regard to his safety in case he is required to go to Kurnool, such allegations and counter allegations are not uncommon in matters of this nature and as observed by the Supreme Court in Sangeeta @ Shreya's case (supra), any threat to him can always be reported to the Court concerned for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication. Further, the provision of Section 9 of the Hindu Marriage Act, 1955, as amended in the year 2003, gives liberty to the wife to file a petition under the provisions of the said Act before a Court within the local limits of whose ordinary original civil jurisdiction she is residing on the date of presentation of her petition. Thus, the Statute gives a special status to the wife insofar as the place of suing. Even though the present petition is filed by the husband, the said provision cannot be totally ignored. Further, in the facts and circumstances of the case,

wife's inconvenience, incapacity, lack of assistance and financial weakness to undertake travel to attend the case filed by the husband in a Court at a place which is away from the place of her residence require consideration more particularly in the light of the fact that she is having custody of an young child.

On the above analysis, this Court is of the considered view that the convenience of the wife outweighs the inconvenience, if any, of the husband and shall prevail.

Accordingly, the Tr.C.M.P. is allowed and O.P. No.161 of 2014 is withdrawn from the file of the Court of the learned Principal Senior Civil Judge, Chittoor, and is transferred to the Court of the learned Principal Senior Civil Judge, Kurnool, for trial and disposal in accordance with the procedure established by law. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

17th November 2016

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