

Dr. JUSTICE B.SIVA SANKARA RAO

Tr. C.M.P. No.233 OF 2016

ORDER:

The Tr.C.M.P. is filed to withdraw O.P. No.1500 of 2013 from the file of Judge, Family Court, Ranga Reddy District at L.B Nagar and transfer the same to the Judge, Family Court, Vijayawada, Krishna District.

2) The petitioner herein by name Purnima Rani is the wife of the respondent by name Balaji. She filed the transfer petition through her father K.M.G.Tilak as her G.P.A. holder. O.P. No.1500 of 2013 is filed by the husband against wife, under Section 13 (1) (ia) of Hindu Marriage Act on the ground of cruelty and the same is under contest as on date. Originally, respondent herein filed divorce petition vide O.P. No.1210 of 2012 on the file of Family Court, City Civil Court, Hyderabad and same was made over to the Additional Family Court and from objection raised for want of jurisdiction within the meaning of Section 19 of H.M Act, the same was returned for presentation before the proper Court, which is the Family Court, Ranga Reddy District where the wife was working by then in a software company, Gachibowli, Ranga Reddy District. It is thereby, the divorce petition is renumbered as O.P. No.1500 of 2013 pending on the file of Judge, Family Court, Ranga Reddy District.

3) The husband (Balaji), filed another O.P. No.1022 of 2015 against his wife under Sections 7, 8 and 25 of Guardians and Wards Act, 1890 read with Section 7 of the Family Courts Act, 1984 on the file of Family Court, Vijayawada, Krishna District for custody of his minor daughter by name Baby Vasumathi aged

about 5 or 6 years, who is with his in-laws and not with his wife residing at West Des Monies, USA and working there as software engineer. Her parents are residing in Krishna District at Ramavarappadu, Vijayawada, of whom father of wife shown as a bank employee, aged about 59 years, near to superannuation. It is on ground of jurisdiction aspect raised that the child is with the maternal grand parents only by then at Warangal, the custody matter ought to have been filed before the Family Court or District Court, Warangal of that jurisdiction for custody of person or guardianship of the property, as the case may be. However, later the father of the wife was transferred to Vijayawada, now where he resides and the minor child also resides there with the maternal grand parents.

4) It is in the factual scenario, the wife, represented by her father, filed present petition to transfer the divorce petition O.P. No.1500 of 2013 pending before the Judge, Family Court, Ranga Reddy District to Judge, Family Court, Vijayawada. The husband as respondent to the petition opposed the same.

5) Heard both sides at length and perused the material on record.

6) On behalf of the petitioner—wife, represented by her father, it is one of the submissions that once the child is residing with the maternal grand parents at Vijayawada, the same has to be considered and it cannot be possible to transfer the custody petition to Hyderabad or Ranga Reddy District where the husband resides at Sherilingampally. The other submission is to avoid conflicting decisions in both the matters between the couple and

though, in the custody matter, parents of wife also impleaded, it is necessary to transfer the divorce petition from Family Court, Ranga Reddy District to Family Court, Vijayawada, Krishna District. One of the further submissions is that the interim custody application under Section 26 of Hindu Marriage Act, pending disposal of divorce petition, filed by husband before the Family Court, Ranga Reddy District is still pending.

7) Whereas, husband by appearing in person as respondent to the transfer petition, submits that if the petitioner has no objection for transfer of the custody O.P to the Family Court, Ranga Reddy District, if at all, to say both the matters to be clubbed together to transfer to Family Court, Ranga Reddy District, he has also no objection. However, on behalf of petitioner—wife, her father did not agree. Once such is the case, the contention for avoiding conflicting decisions it requires transfer is not available to the wife representing by her father.

8) Even coming to the other contention that Section 26 of Hindu Marriage Act deals with custody of children that can be passed in the event of granting the relief of divorce finally as per the conditions in the decree like under Section 27 of the H.M Act for disposal of the property between the couple and dissolution of marriage or like under Section 25 of the Act for awarding permanent alimony while dissolving the marital tie. Once the custody petition is filed before the Family Court, Vijayawada, the relief in the application under Section 26 of H.M.Act before the Family Court Ranga Reddy district may not survive but for to seek any interim custody or visiting rights therein.

9) Having regard to the same, that concession also not available to the wife represented by her father, though it is the submission that wife's convenience to be preferred over that of the husband's convenience as per the settled expressions in transfer of the matrimonial disputes, here undisputedly, the wife is in USA and it is her father, as a GPA holder represents the matters. Once she is in USA, it makes no difference for her either to attend Family Court, Ranga Reddy District or Family Court, Vijayawada, but for any difficulty to her father that too, from the cause title itself shows he is a retired employee by now.

10) Having regard to the above, there are no grounds to transfer the divorce petition pending before the Family Court, R.R District at L.B Nagar to the Family Court, Vijayawada much less to try along with the custody petition for the reliefs therein are independent, the evidence to be let in also independent and the considerations therein also independent.

11) Accordingly, the revision is dismissed. No order as to costs.

12) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.19.09.2016
knl