

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.911 of 2016

ORDER:

This petition is filed under Section 24 C.P.C., seeking to withdraw F.C.O.P.No.736 of 2016 on the file of the Judge, Family Court, Vijayawada, and transfer the same to the Judge, Family Court, Srikakulam, for disposal in accordance with law.

2. Heard both the counsel and perused the material available on record.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 24.08.2013 at Sri Krishna Devaraya Kalyana Mandapam, Gajuwaka, Visakhapatnam, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. For one reason or other, disputes arose between the petitioner and respondent, therefore, the petitioner has been residing at her parents house in Srikakulam.

4. A perusal of the record reveals that the respondent filed F.C.O.P.No.736 of 2016 on the file of the Family Court, Vijayawada, against the petitioner under Section 13(1)(ia)(ib) of the Hindu Marriage Act of 1955 read with Section 7 of Family Courts Act, for dissolution of marriage between them. As per the recitals in F.C.O.P., the petitioner is the permanent resident of Srikakulam. The petitioner filed M.C.No.35 of 2016 on the file of the Judicial Magistrate of First Class, Srikakulam, against the

respondent under Section 125 Cr.P.C. seeking maintenance. The distance between Vijayawada and Srikakulam is around 500 kilometers. It is the case of the petitioner that she is not in a position to travel from Srikakulam to Vijayawada in order to prosecute F.C.O.P.No.736 of 2016. Invariably, the respondent has to attend the court of Judicial Magistrate of First Class at Srikakulam in view of pendency of M.C.No.35 of 2016. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner to travel from Srikakulam to Vijayawada without the help of one of the male members of the family.

5. While deciding 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, wife and the children. Even if the petition is allowed, the same may not cause any prejudice to the respondent.

6. As per the principle enunciated in V.Sailaja v V.Koteswara Rao¹, Rachna Kanodia v. Anuk Kanodia², and Sumita Singh v. Kumar Sanjay³, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the petitioner deserves the relief sought for.

¹ AIR 2003 AP 178 = 2003 (1) ALD 673 = 2003 (1) APLJ 441

² 2001(7) Supreme 96

³ AIR 2002 SC 396

At the time of arguments, learned counsel for the respondent submitted that the respondent has been working as Assistant Archaka at Sri Kanakadurga Ammavari Temple, Vijayawada, hence, the presence of the respondent may be dispensed with on each and every date of adjournment before the Family Court, Srikakulam. Even if the presence of the respondent is dispensed with, no prejudice will be caused to the petitioner.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. F.C.O.P.No.736 of 2016 is withdrawn from the file of the Judge, Family Court, Vijayawada, and transferred to the file of the Judge, Family Court, Srikakulam, for disposal in accordance with law. The presence of the respondent before the Family Court, Srikakulam in connection with F.C.O.P.No.736 of 2016 is dispensed with on each and every date of adjournment. However, he shall appear before the trial Court as and when his presence is so required. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

10th April 2017
Pns

