

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.No.441 OF 2017

ORDER:

This petition is filed to withdraw F.C.O.P.No.300 of 2016 pending on the file of Judge, Family Court, Nellore, and to transfer the same to the District Judge-cum-Family Court, Guntur on the ground that the petitioner is residing with her parents at Guntur, after she was driven out from her house by the respondent herein and it is difficult for her to perform journey covering distance of more than 240 Kms., on every date of adjournment and apart from that she also filed a Maintenance Case before the Judge, Family Court, Guntur, which is pending for trial and the respondent is appearing in the M.C.

The first and foremost ground raised before this Court that she is unable to perform journey covering more than 240 Kms., along with her minor child aged 18 months approximately. F.C.O.P. pending before the Family Court, Nellore is only a matter of civil in nature, purely and her presence on every date of adjournment is not required. At best her presence is required when her cross-examination is required to be recorded or for any other specific purpose when the Court directed her to appear before the Court, as long as her counsel is representing her case and prosecuting

the case on her behalf. Even otherwise her cross-examination can be recorded by videoconference and if such facility is not available, her husband-respondent herein shall deposit the expenses for traveling, boarding and lodging in terms of Order XXV of Code of Civil Procedure whenever she attends Court in connection with the F.C.O.P. In **Krishna Veni Nagam v. Harish Nagam**¹, the Supreme Court in paragraph 18 of the judgment laid down certain guidelines in the matrimonial cases for withdrawal and transfer, which are as follows:

“18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.*
- ii) Availability of legal aid service.*
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.*
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”*

Therefore, inability to perform journey covering more than 240 Kms., is not a ground to withdraw and transfer the

¹ JT 2017 (3) SC 190

petition, since, the above judgment indirectly indicated the other methods to be followed in matrimonial matters instead of withdrawal and transfer due to any inconvenience.

The other ground raised before this Court the Maintenance Case in M.C.No.191 of 2017 filed under Section 125 of Code of Civil Procedure is pending before the Judge, Family Court, Guntur, but the same cannot be clubbed along with the petition filed under Section 9 Hindu Marriage Act. However, appearance of the respondent before the Judge, Family Court, Guntur by itself is not a ground to deviate the jurisdiction which conferred on the Court, therefore, it is also not a ground to withdraw and transfer the petition.

In view of the difficulty expressed by the petitioner, her appearance before the Judge, Family Court, Nellore, on every date of adjournment is dispensed with as long as she is being represented by her counsel and her counsel prosecuting the proceedings on her behalf, except on the day when her cross-examination is required to be recorded by the Court, or on any day when she is specifically directed by the Court.

In view of the facts and circumstances stated above, the Judge, Family Court, Nellore is requested not to insist the appearance of the petitioner herein on every date of adjournment as long as her counsel representing her and prosecuting the proceedings on her behalf except on the day

of reconciliation and on the day when her cross-examination is required to be recorded, when facility of video conference is not available, the respondent be directed to deposit traveling, boarding and lodging expenses in terms of Order XXV of Code of Civil Procedure and on such deposit the petitioner shall appear before the Court and depose. This direction does not preclude the Judge, Family Court, Nellore to pass any order against the petitioner in the event of her counsel failed to represent and prosecute the proceedings, in accordance with law.

With the above direction, the petition is disposed of at the stage of admission. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

July 14, 2017

Pn

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



TRANSFER C.M.P.No.441 OF 2017

July 14, 2017

Pn