

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.No.382 of 2017

ORDER :

This transfer petition, under Section 24 of Code of Civil Procedure, 1908, is filed seeking withdrawal of O.P.No.378 of 2017 pending on the file of the Judge, Family Court, Vijayawada, Krishna District, and transfer the same to the Court of X-Additional District Judge, Guntur at Gurazala.

2. The petitioner herein is wife and she sought for transfer of O.P.No.378 of 2017 on the ground that the petitioner is staying with her parents at Piduguralla and that she has no means to undertake journey from Piduguralla to Vijayawada covering distance of more than 130 kms. on every date of adjournment, apart from that she being a lady cannot undertake such a long journey. It is contended that when the petitioner necked out from the matrimonial house for her failure to meet the illegal demand of additional dowry, lodged a complaint at Piduguralla and after investigation the police filed charge sheet, which is registered as C.C.No.25 of 2017 pending on the file of the Judicial First Class Magistrate, Piduguralla. It is also contended that D.V.C.No.8 of 2015 is pending before the Judicial First Class Magistrate, Piduguralla, for trial. Therefore, it is convenient for the petitioner to attend before the Court at Gurazala and prosecute the proceedings at Piduguralla in D.V.C. and C.C. referred supra and

prayed to withdraw and transfer O.P.No.378 of 2017 from Vijayawada to Gurazala.

3. Heard learned counsel for the petitioner at the stage of admission.

4. During hearing, Sri N. Subba Rao, learned counsel for the petitioner, while reiterating the grounds urged in the transfer petition drawn the attention of this Court to the contents of the complaint and other papers including the copy of O.P.No.378 of 2017 pending before Family Court, Vijayawada, contended that it is difficult for the petitioner to attend the Court at Vijayawada on all dates of adjournments and prosecute the proceedings effectively to face fair trial, the learned counsel requested the Court to withdraw and transfer the matter pending on the file of the Judge, Family Court, Vijayawada to X-Additional District Judge, Guntur at Gurazala.

5. The first and foremost ground raised before this Court is that the petitioner being a lady having no means to maintain herself is unable to appear before the Judge, Family Court, Vijayawada on the dates of adjournments. No doubt, it is difficult for a woman to undertake journey on every date of adjournment. But that by itself is not a ground to withdraw and transfer the case, since the *forum non conveniens* based on the principle laid down in **Modi Entertainment Network and another v. W.S.G. Cricket Pte.Ltd¹**, is not a ground in view of latest Judgment of the Hon'ble Apex Court in **Krishna Veni**

¹ (2003) 4 SCC 341

Nagam v. Harish Nagam², where the Apex Court issued certain directions to be followed by the Subordinate Courts in the country in cases where transfer petitions filed with regard to matrimonial cases are to be disposed of. In **Krishna Veni Nagam** (supra), the Apex Court issued certain guidelines to the Judges, which reads thus:

“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 Code of Civil Procedure.*
- iv) E-Mail address/phone number, if any, at which litigant from out station may communicate.”*

6. In view of the guidelines, the parties can be examined by video conferencing, if available, or otherwise husband shall deposit travelling, lodging and boarding expenses whenever the petitioner-wife attends the Court in connection with the pending O.P.No.378 of 2017 and she has to furnish her address particulars and phone number

² AIR 2017 SC 1345

to the Court where within whose limits she is residing so as to enable the Judge, Family Court, to inform about the date and other information. Hence, the distance and inability to meet the expenses on account of poverty or otherwise is not a matter, now. Hence, on that ground the petition cannot be withdrawn and transferred.

7. The other ground urged before this Court is that D.V.C.No.8 of 2016 and C.C.No.25 of 2017 are pending before the Judicial First Class Magistrate, Piduguralla. But, those two matters are to be tried by Judicial First Class Magistrate, but not by a District Judge at Gurazala. Therefore, pendency of those matters has no relevancy for deciding the dispute in O.P.No.378 of 2017. Hence, I find that pendency of those matters before Judicial First Class Magistrate, Piduguralla, is not a ground to withdraw and transfer O.P.No.378 of 2017. However, the Judge, Family Court, Vijayawada, Krishna District, is directed not to insist the presence of the petitioner on every date of adjournment due to her inability to attend the Court for reasons mentioned in the earlier paras, except on the dates whenever her appearance is required for cross-examination or for any other purpose subject to deposit of travelling, boarding and lodging expenses by her husband i.e., respondent herein strictly adhering to the guidelines of the Apex Court in Krishna Veni Nagam's case referred supra. This direction does not preclude the trial Court to pass any order against the petitioner, in case the counsel did not represent, appear and prosecute the petitioner pending before the Court.

8. With the above observation and direction, the transfer C.M.P. is disposed of at the admission stage itself.

9. Miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

16th June 2017.

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