

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION NO.104 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw F.C.O.P.No.1759 of 2016 pending on the file of Additional Family Court, Visakhapatnam and transfer the same to the Judge, Family Court, Guntur, to try and dispose the matter in accordance with law.

The first ground urged by the petitioner is that she was blessed with a child during wedlock, aged two years, and she has to take care of the child; and the second ground urged is that she is prosecuting M.Tech, final year, at Guntur and, thereby, it is difficult for her to appear before the Court at Visakhapatnam to prosecute the proceedings.

Smt D.Padmavathi, learned Counsel for the petitioner, while reiterated the contentions raised in the petition, contended that, it is difficult for her to undertake journey covering 385 Kms. with a two years old child and prosecute proceedings engaging a counsel at Visakhapatnam and, therefore, prayed to withdraw F.C.O.P.No.1759 of 2016 from Judge, Family Court, Visakhapatnam and transfer the same to the Judge, Family Court, Guntur.

Respondent appeared in person and expressed his inconvenience during argument to appear before the Judge, Family Court, Guntur as his mother is bed-ridden and he

himself is taking care of her and prayed for dismissal of the petition.

The first and foremost contention of the petitioner is that she has to take care of two years old child. Admittedly, she is prosecuting M.Tech at Chebrolu which is 30 Kms. away to Guntur while taking care of the child. Therefore, it is not a ground to withdraw and transfer F.C.O.P. and, if really, she want to undertake journey of 385 Kms., she can travel along with the child and appear before the Court at Visakhapatnam. It is also contended that, while she was attending to college, her parents are taking care of the child and, if she attends Court, her parents can take care of the child. Therefore, it is not a ground for withdrawal and transfer of F.C.O.P.

The second ground urged is that the petitioner cannot undertake journey of 385 Kms. from Guntur to Visakhapatnam. Undoubtedly, it is difficult task to undertake journey to appear before the Court frequently. But that itself is not a ground to withdraw and transfer the case. The Apex Court, in **Krishna Veni Nagam v. Harish Nagam**¹, framed the following guidelines:

“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.*

¹ AIR 2017 SC 1345

- 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.”*

Keeping in view the guidelines issued by this Court, I deem it appropriate to direct the Judge, Family Court, Visakhapatnam not to insist appearance of the petitioner on every date of adjournment unless her presence is necessary either for cross-examination or any other purpose and at best, the witness can be examined by video conference. If no facility of video conference is available, when the petitioner's presence is required, the respondent may be directed to deposit travelling, lodging, boarding and other incidental expenses vide guideline No.2 and furnish other details like address etc. to contact the petitioner vide guideline No.3. On such deposit, the petitioner shall appear before the Court on the date when her presence is required for cross-examination or for any other purpose. This direction would meet the ends of justice to serve the purpose.

With the above direction, the Transfer Civil Miscellaneous Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date:14.06.2017
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