

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

TRANSFER C.M.P. No.194 of 2017

ORDER:

The petitioner is the wife of the respondent. She filed this application seeking transfer of O.P.No.459 of 2016 pending before the Judge, Family Court, City Civil Court, Secunderabad, to the Court of the Judge, Family Court, Kurnool.

2. Heard.

3. Going by the pleadings of the respondent-husband in O.P.No.459 of 2016 filed for divorce, the marriage between the parties was solemnized on 05.11.2009 at Kurnool Town. The husband is stated to have filed an application for restitution of conjugal rights before the Kurnool Court and that was decided *ex parte* on 11.08.2014 in his favour. The wife impeaches that decision, as she has instituted a Domestic Violence Case before the competent authority in Kurnool.

4. The petitioner and the respondent do not have any children. According to the wife, she is unable to come over to Secunderabad to contest O.P.No.459 of 2016. She pleads that she suffered harassment at the hands of the husband and also lost her father when he was apprised of the demand for further dowry.

5. Learned counsel for the respondent-husband submits that in response to the DVC proceedings, the husband appeared before the competent authority in Kurnool. On that day, there was certain untoward incident in which the husband was manhandled by some

local people. He, therefore, apprehends that the husband will face such consequences, if he is compelled to stand in the proceedings before the Kurnool Court on transfer of O.P.No.459 of 2016.

6. The question of according protection to a person, issuing orders and enforcing them, recording payment of litigation expenses etc., are matters within the domain of the Family Court. Therefore, the mere fact of apprehension of any untoward incident against the husband or litigation expenses in connection with transfer, as apprehended by the wife, may not themselves be decisive in such matters. There is a larger issue, which may ultimately surge for consideration of the Family Court in O.P.No.459 of 2016. That would relate to the sustainability or relatability of the continued proceedings for restitution of conjugal rights, where an *ex parte* order, as stated by the wife, was obtained by the husband and it is impeached by the wife by pleading that she had not received any notice. Even going by the pleadings in O.P.No.459 of 2016, the material witnesses are likely to be those in the locality where the couple resided in Secunderabad. Ends of justice, therefore, require O.P.No.459 of 2016 to be continued to be adjudicated by the Family Court, City Civil Court, Secunderabad.

7. Though the wife says that she will not have any support to travel, I am sure that the Family Court, City Civil Court at Secunderabad, can issue such orders as are required to support a woman to transit and also noticing that in 2016, when the

application for divorce was instituted, the husband and wife were shown to have been aged 28 and 24 years respectively.

8. In such circumstances, this Transfer Petition does not merit acceptance. The same is accordingly dismissed, however, clarifying that it will be open to the Family Court, City Civil Court, Secunderabad, to pass such orders as may be necessary for providing assistance including through orders for litigation expenses for the wife to travel to Secunderabad and contest the proceedings in Secunderabad Court. The appearance of the petitioner will however stand dispensed with before the Family Court, City Civil Court, Secunderabad, otherwise for particular purposes ordered by that Court in connection with proceedings before it either as a part of Alternative Disputes Resolution procedure or for trial.

Pending miscellaneous petitions, if any, shall also stand dismissed.

---

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 21.12.2018

*va*