

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.415 OF 2017

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw H.M.O.P. No.99 of 2016 and transfer to the file of the Judge, Family Court-cum-Bomb Blast Court (BBC) at Nampally, Hyderabad, on the ground that the petitioner filed M.C. No.415 of 2015 under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') before the Judge, Family Court-cum-Bomb Blast Court (BBC), Nampally, Hyderabad, whereas H.M.O.P. No.99 of 2016 under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 was filed by the respondent, and if the H.M.O.P. is withdrawn and transferred to the court at Nampally it is convenient for her to attend the court at a time and she is also facing difficulty to attend the court at Miyapur while taking care of her child aged 6 years. Therefore, the petitioner sought withdrawal and transfer of H.M.O.P.

The first and foremost ground is, pendency of M.C. No.415 of 2015 before the Judge, Family Court-cum-Bomb Blast Court (BBC), Nampally, Hyderabad, and it is pending for the last two years, whereas the H.M.O.P. is filed in the year 2016 and she could attend the court at Miyapur for the last one year and now she is facing difficulty to appear before the court at Miyapur, having suffered adjournments for one year.

The distance between Nampally and Miyapur is less than 20 kilometers and she is resident of Nimboli Adda, Kacheguda,

Hyderabad. Therefore, her appearance before the Judge, Family Court, at Miyapur is not difficult task for her. Even otherwise, H.M.O.P. is purely civil in nature and her presence on each and every date of adjournment is not required as long as her counsel representing her and prosecuting the proceedings on her behalf. At best she is required to appear before the court for her cross-examination or for any other specific purpose as and when the court directed her personal appearance. Consequently, her appearance on one or two occasions is not a ground to withdraw H.M.O.P. No.99 of 2016 to the Family Court-cum-Bomb Blast Court (BBC) at Nampally, Hyderabad.

The M.C. No.415 of 2015 is filed under Section 125 of Cr.P.C. and it is being tried under the provisions of the Code of Criminal Procedure, whereas the H.M.O.P. is being tried as per the procedure under Hindu Marriage Act and hence question of their clubbing together does not arise, since the jurisdiction of these courts under two enactments is different.

Therefore, I find no ground to withdraw H.M.O.P. No.99 of 2016 and transfer the same to the Family Court-cum-Bomb Blast Court (BBC) at Nampally, Hyderabad. However, the Judge, Family Court at Miyapur is requested not to insist appearance of the petitioner on every date of adjournment, except on the date when her cross-examination is required to be recorded or on any other date as directed by the court, as long as the counsel representing her and prosecuting the proceedings on her behalf and in the event of failure to prosecute the proceedings by her counsel, this request

would not preclude the Judge, Family Court, to pass appropriate orders against the petitioner herein, in accordance with law.

Accordingly, the transfer civil miscellaneous petition is dismissed. No costs.

Miscellaneous petition, if any, pending in this Tr.CMP shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 03.07.2017
BV

