

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 406 OF 2017

COMMON ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed by wife to withdraw D.O.P.No.218 of 2017 pending on the file of Principal District Judge-cum-Family Court, Khammam, and transfer the same to the Court of Judicial Magistrate of First Class, Miryalaguda or Senior Civil Judge's Court, Miryalaguda.

The petitioner contended that she is resident of Miryalaguda, Nalgonda District, whereas O.P is pending at Khammam, which is far away to the place of her residence i.e. 100 kms. It is also contended that she is unable to undertake journey covering distance of 100 kms while attending her child and parents and that she has no means to maintain herself. Therefore, it is difficult for her to defend the proceedings at Khammam.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the petition, at the stage of admission.

The respondent filed petition under Section 10(x) of the Divorce Act, 1869 for dissolution of marriage, which is pending before the Principal District Judge-cum-Family Court, Khammam.

The only grievance of the petitioner is that her inability to undertake journey covering distance of 100 kms to attend the Court on every date of adjournment.

No doubt, the petitioner being a woman cannot undertake journey frequently covering distance of 100 kms and it is difficult for

her to undertake journey on every date of adjournment with her child. 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.*
- 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.”*

In view of above guidelines, inconvenience to undertake journey may not be a ground to withdraw and transfer O.P. from one Court to another, as she can be examined by video conference and distance is not a matter. 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

¹ AIR 2017 SC 1345

cross-examination or for any other purpose. This direction would meet the ends of justice to serve the purpose.

In view of difficulty expressed by the petitioner, the Principal District Judge-cum-Family Court, Khammam, is directed not to insist the petitioner to appear on every date of adjournment, except on the dates where her presence is required for recording her cross examination or for any other purpose. This direction would not preclude the Court to pass any order against the petitioner in accordance with law for her failure to get the proceedings prosecuted through her counsel.

With the above direction, the Transfer Civil Miscellaneous Petition is disposed of. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 28-06-2017.
kvrn

M.SATYANARAYANA MURTHY, J.

