

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.229 of 2017

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw F.C.O.P.No.1496 of 2012 from the file of the Family Court at Hyderabad, and transfer the same to the file of the Family Court at Vijayawada.

2. Heard the learned counsel for both parties and perused the material available on record.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 03.12.2008 at Vijayawada, as per Hindu Rites and Caste Custom. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with one daughter. For one reason or other, disputes arose between the petitioner and respondent; therefore, the petitioner has been residing at her parents' house in Vijayawada. While things stood thus, the respondent filed F.C.O.P.No.1496 of 2012 on the file of the Family Court at Hyderabad, under Section 9 of the Hindu Marriage Act, 1955, against the petitioner for restitution of conjugal rights. The petitioner remained *ex-parte*. Thereafter, the petitioner filed I.A.No.329 of 2016 in O.P.No.1496 of 2012 to set aside the *ex-parte* order and the same was allowed on 01.03.2017.

4. The distance between Vijayawada and Hyderabad is around 260 K.M. It is the case of the petitioner that she is not in a

position to travel from Vijayawada to Hyderabad along with her daughter in order to prosecute F.C.O.P.No.1496 of 2012.

5. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, to the wife and children. As per the principle enunciated in **T.Gayatri Devi v. Dr. Tallepaneni Sreekanth**¹, **Rachna Kanodia v. Anuk Kanodia**² and **Sumita Singh v. Kumar Sanjay and another**³, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the relief sought by the petitioner deserves to be allowed.

7. Learned counsel for the respondent submitted that the respondent has been working as a Police Constable; therefore, it may not be possible for him to appear before the Family Court at Vijayawada on each and every date of adjournment. He further submitted that the presence of the respondent may be dispensed with before the said Court on each and every date of adjournment. Even if the presence of the respondent is dispensed with, no prejudice would be caused to the petitioner.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. F.C.O.P.No.1496 of 2012 is withdrawn from the file of the Family Court at Hyderabad, and transferred to the file of the

¹ 2013 (6) ALT 42 (SC)

² 2001 (7) Supreme 96

³ AIR 2002 SC 396

Family Court at Vijayawada for disposal in accordance with law. The presence of the respondent in respect of F.C.O.P.No.1496 of 2012 is hereby dispensed with on each and every date of adjournment before the Family Court at Vijayawada. However, he shall appear before the said Court as and when his presence is so required. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.04.2017
Ivd

