

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.Nos.123 & 473 of 2017

COMMON ORDER:

Transfer C.M.P.No.123 of 2017 is filed by the wife requesting to withdraw O.P.No.67 of 2017 from the file of the Family Court, Ranga Reddy District at L.B. Nagar, and transfer the same to the file of the Senior Civil Court, Peddapalli, for trial and disposal in accordance with the procedure established by law either together or simultaneously with the OP already pending on the file of the latter Court.

2. Transfer C.M.P.No.473 of 2017 is filed by the husband requesting to withdraw O.P.No.37 of 2017 from the file of the Senior Civil Court, Peddapalli, and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar.

3. Since the parties in the two Petitions are wife and husband and as the questions involved for consideration in both the Transfer Petitions are common and overlapping, both the petitions are heard together and are being disposed of by this common order.

4. The parties shall hereinafter be referred to as the petitioner-wife and the respondent-husband as arraigned in Tr.CMP.No.123 of 2017 filed by the wife for convenience and clarity.

5. I have heard the submissions of Sri P. Venkanna, learned counsel for the petitioner-wife and of *Sri T. Koteswara Prasad*, learned counsel for the respondent-husband. I have perused the material record.

6. To begin with, it is necessary to note that the wife filed OP.No.37 of 2017 under Section 9 of the Hindu Marriage Act, 1955 ['the Act', for short] for restitution of conjugal rights. The husband filed OP.No.67 of 2017 under Section 13(1)(ia)(ib) of the Act seeking dissolution of marriage, dated 12.05.2013, between the spouses by a decree of divorce.

7. The case of the wife, which is relevant for consideration, in brief, is as follows: “The marriage is consummated. Under a lawful wedlock she gave birth to a boy. He is now aged about 1 ½ years. She is presently residing at her parents’ house at Godavarikhani. The husband is a software employee. He is working at Bengaluru by August, 2016. He is earning Rs.80,000/- per month. He is not paying any maintenance to her and her child. She is depending upon her parents. She received the notice in the OP filed by the husband in the Court at Ranga Reddy, for divorce. She has to take care of the minor child, aged about 1 ½ years. She is a house wife. She has no income or sources of income. She is not in a position to attend the Family Court at Ranga Reddy District on the date of every adjournment to participate in the proceedings in that Court. Hence, she filed the present petition seeking transfer of the OP of the husband to the Court at Peddapalli where the OP instituted by her is pending.”

8. The case of the husband, which is relevant for consideration, in brief, is as follows: “The OP for restitution of conjugal rights was filed by the wife in the Senior Civil Court, Peddapalli, long after the breaking of the marital tie between the spouses. The wife has not chosen to appear even once before the Family Court at Ranga Reddy to settle the dispute. Without appearing before the Family Court, she filed the present transfer petition and obtained stay orders of all further proceedings in the OP filed for divorce. The wife and her brothers are having criminal background. Therefore, this respondent-husband apprehends danger to his life at their hands in case he was required to go to Peddapalli. On earlier occasions also panchayats were convened by the elders of both the parties. The petitioner-wife and her brothers misbehaved with this respondent at the panchayats held. Family Court at L.B. Nagar is presently seized of the OP filed by this respondent. There is no Family Court at Peddapalli. The said Senior Civil Court is having huge pendency of different kinds of cases. If the cases are brought to the file of the Family Court, there is

a likelihood of early disposal of both the cases. It is in the interests of both the parties that both the cases be tried by Family Court at Ranga Reddy District. There is no financial difficulty for this respondent to approach the Family Court at L.B. Nagar. The petitioner-wife is residing at Godavarikhani. She has to anyhow undertake travel from Godavarikhani to Peddapalli for pursuing her case. Instead, she can directly come to Secunderabad by boarding a train at Ramagundam station. She need not incur huge expenditure for such travel from her place of residence to Secunderabad and from there to the Court at Ranga Reddy. A number of trains are available for her to travel from Ramagundam to Secunderabad. If the case is transferred to Peddapalli, this respondent has to travel from Bengaluru to Hyderabad and from Hyderabad to Peddapalli; therefore, it would be very difficult for him to attend the Court case at Peddapalli while attending to his job at Bengaluru.”

9. At the hearing, learned counsel for the petitioner-wife, while reiterating the pleaded case of the petitioner-wife, submitted as follows: ‘The distance between Peddapalli and Ranga Reddy is more than 200 KMs. There is no direct train connecting the two places. Even according to the submissions of the husband, to come to Secunderabad, the wife has to travel with her young child from Peddapalli to Ramagundam and then from Ramagundam to Secunderabad; and, then she must again travel from Secunderabad to the Court at Ranga Reddy District. Therefore, it is difficult for the wife to travel from Peddapalli to Ranga Reddy District by changing trains and buses, that too along with a child of less than two years of age. The husband is not offering to pay to her, her traveling, lodging and incidental expenses and of a person who may accompany her on the date of every adjournment of the court case at Ranga Reddy District. There is nobody to accompany and assist her and that on the date of every adjournment she has to look for a person to accompany her to Ranga Reddy. She has no income or means to meet the travelling and other expenses. The husband being a male person can undertake travel from

Hyderabad to Peddapalli as it is not difficult for a male earning person to undertake such travel for the purpose of attending the court case.'

10. Per contra, learned counsel for the respondent-husband while reiterating the pleaded case of the respondent would submit as follows: - 'The respondent is employed at Bengaluru. It would be very difficult for him to get leave for a period of 2-3 days on every date of adjournment of the Court case at Peddapalli. If the cases are brought to the Family Court, Ranga Reddy District, it would be very easy for him to travel from Bengaluru to Hyderabad. However, if both the cases are brought to the file of the Senior Civil Court, Peddapalli, he has to spend 2 or 3 days on travel itself and, therefore, it will affect his prospects of employment and career progression.'

11. Learned counsel for the petitioner-wife in reply would submit that the husband has already engaged an advocate and that he need not attend the Court cases on every date of adjournment and that his presence at best may be required on the day of cross examination of the wife and also on the day he deposes in the matters and that, therefore, no hardship would be caused if the cases are tried by a Court at Peddapalli, which is erstwhile part of Karimnagar Revenue District.

12. I have given earnest consideration to the facts and submissions.

13. Before proceeding further, it is profitable to first refer to the following decisions:

In *Gayatri Mohapatra v. Ashit Kumar Panda* (2003)11 SCC 731, the Supreme Court noted that the wife is a Director in a Company run by her mother and that she is used to travelling from place to place and observed that her incapacity to travel cannot be permitted to be stated as a ground to seek transfer of the husband's case.

In *Teena Chhabra v. Manish Chhabra* (2004) 13 SCC 411, the Supreme Court accepted the husband's offer to bear the expenses for the travel, boarding and lodging of the wife and dismissed her transfer petition filed on the ground that she had no source of income to travel.

In *M. Svagami v. R. Raja* (2005) 12 SCC 301, the Supreme Court disallowed the wife's transfer application by directing the husband to pay her litigation costs and also her expenses and those of her witnesses.

In *Kanagalakshmi v. A. Venkatesan* (2004) 13 SCC 405, the Supreme Court accepted the plea of the husband that he would bear the expenses, not only of the wife but also of her companion, for travel and stay at the place where the case was pending, and accordingly dismissed the wife's transfer petition. The same principle was reiterated in *Priyanka Batra v. Manish Batra* (2005) 12 SCC 236; *Kakali Pal v. Balai Chandra Pal* (2005) 12 SCC 216; *Anuradha Dutta v. Subash Chandra Dutta* (2004) 13 SCC 694; *Sarita Singh Alias Babli Baghel v. A.P. Baghel* (2005) 12 SCC 376; *Kamudi Aurora v. Surinder Pal Singh Aurora* (2004) 13 SCC 634; and *Gargi Konar v. Jagjeet Singh* (2005) 11 SCC 446.

In *Preeti Sharma v. Manjit Sharma* (2005) 11 SCC 535, the Supreme Court observed that merely because the petitioner was a lady it did not mean that she could not travel to another place and that, at the highest, she could be paid expenses for her travel and stay.

In *Premlata Singh and Ors. v. Rita Singh* (2005) 12 SCC 277, the Supreme Court directed the transfer of the case taking into consideration the fact that the wife was undergoing treatment for kidney failure.

In *Usha George v. Koshy George* (2000) 10 SCC 95, the Supreme Court held that it was not proper to transfer the case to any other Court as a number of hearings had already taken place in the Court where the case was already pending.

In *Neelam Bhatia v. Satbir Singh Bhatia* (2004) 13 SCC 436, the Supreme Court taking note of the fact that the case had progressed to the stage of trial disallowed the wife's transfer application, directing the husband to bear the travel and incidental expenses of the wife and her companion.

In *Anindita Das v. Srijit Das* (2006) 9 SCC 197, the Supreme Court found that leniency to ladies shown by the Court in transfer matters was being often misused and taken advantage of by women. The Supreme Court also observed that each petition is to be considered on its merit. On the facts of that case, the Supreme Court first noted that the grandparents were available to look after the six year old child and then taken note of the husband's offer to bear the expenses for the wife's and her companion's travel, and dismissed the wife's transfer application.

In *Eluri Raji Reddy and Ors. v. State of Delhi and Anr.* 2004 Cri LJ 2555, the Supreme Court found that as the wife had a house in Andhra Pradesh and her parents were living there it would be proper to transfer the cases filed by her at Delhi to a Court in Andhra Pradesh as sought for by her husband.

In *Meenakshi v. Mukesh Kumar* (2004) 13 SCC 497, the Supreme Court accepted the statement made by the husband with regard to the safety and

security of the wife and that he would bear her conveyance charges and disallowed the wife's transfer application.

In *Lalita v. Kulwinder Kumar* (2007) 15 SCC 667, the Supreme Court having not accepted the offer of the husband to pay all expenses for his wife's travel, ordered transfer of the husband's case from the Court at Ghaziabad to the Court at Ludhiana by allowing the wife's petition filed on the grounds that she is having school going children, who cannot be left behind alone, and that she is suffering from certain ailment which required surgery and that she is not in a position to bear litigation and travel expenses.

In the decision in *Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi* (2005) 12 SCC 237, despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition.

In *Sumita Singh v. Kumar Sanjay and Another* (2001) 10 SCC 41, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at.

In *Sangeeta @ Shreya v. Prasant Vijay Wargiya* (2004) 13 SCC 407, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan.

In the Judgment of the Supreme Court in *Kulwinder Kaur v. Kandi Friends Education Trust* [AIR 2008 SC 1333], while dealing with the power of the Court to transfer suits, appeals or other proceedings under Sections 24 and 25 of the Code, the Supreme Court held as under:

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may

constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

The Supreme Court in *Krishnaveni Nagam v. Harish Nagam*¹, while suggesting alternative to transfer of proceedings on account of inability of a party to contest the proceedings at a place away from his/her ordinary residence, held as follows: - 'We, therefore, direct that 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 costs for travel, lodging and boarding in terms of Order XXV CPC; and, iv) e-mail address/phone number, if any, at which litigant from outstation may communicate.'

¹ 2017 LAwSuit(SC) 195

From a synopsis of the aforesaid Judgments, it is clear that there is no rule of thumb that can be uniformly applied in cases of this nature. Each case would ultimately turn on its own peculiar facts and circumstances and must be dealt with accordingly.

14. One OP is filed by the wife for restitution of conjugal rights in Senior Civil Court at Peddapalli and another OP for grant of divorce is filed by the husband in the Family Court, L.B. Nagar of Ranga Reddy District. Considering the issues involved in the two cases, it is in the interest of both the parties that both the cases should be tried and disposed of by a single forum, be it the Senior Civil Court, at Peddapalli or the Family Court, Ranga Reddy District at L.B. Nagar, or any other Court situate at a place easily accessible and convenient to both the parties. Therefore, the issue for consideration is as to which of the two Courts should be preferred. The alternative question is as to whether both the cases can be brought to a Court at one centrally located place, which may be relatively easily accessible and more or less equally convenient to both the parties.

15. Indeed, all the contentions of the parties are adverted to supra, in detail. This Court has to now consider the relevant contentions of the parties sans serious allegations traded by the parties, as while making orders in petitions of the present nature, this Court will not enter into the merits of the main matters and record any findings which will have a bearing on the issues involved in the main matters.

16. The wife specifically pleads physical inability to undertake travel from Peddapalli to Ranga Reddy District, which is at a distance of more than 200 KMs and which is not well connected to her place of residence. She further submits that she is not employed and that she has no income or sources of income and that she has no male support to attend the Court case before the Family Court, Ranga Reddy District, on each and every date of adjournment, and that she has

to look for assistance of one person to accompany her from Peddapalli to Ranga Reddy on the date of each and every adjournment of the said case and that it is highly difficult for her to travel from Peddapalli to Ranga Reddy along with her young child and that if her request for transfer is not considered she will be put to irreparable loss and hardship. On the contrary, the husband pleads that he is employed at Bengaluru and that he can easily come over to Hyderabad and attend both Court cases if the wife's petition is also transferred to the Court located at Ranga Reddy and that if the wife's request is considered and both the cases are brought to the file of the Court located at Peddapalli, it would be difficult for him to obtain leave for 2-3 days on every date of adjournment of the cases and that obtaining leave frequently would affect prospects of his employment and progress in career. Be it noted that in the Indian context an earning male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a non-earning female or a house wife, who is having a young child. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. Though the respondent-husband voiced apprehensions with regard to his safety in case he is required to go to the place of the petitioner-wife, such allegations are not uncommon in matters of this nature and as observed by the Supreme Court in *Sangeeta @ Shreya v. Prasant Vijay Wargiya* [(2004) 13 SCC 407], any threat to him can always be reported to the Court concerned for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication. It is stated that in the Court at Peddapalli there is no video conferencing facility and that the learned Presiding Officer of the Court at Peddapalli and also the parties have to necessarily come to the Court complex at District Head Quarters for availing the said facility. In the case on hand, the husband is not making an offer to pay to the wife, travel, lodging and other expenses which the wife has to meet for attending the court case at Ranga Reddy District. Be that as it may.

17. The wife's petition for restitution of conjugal rights which was filed under the provision of Section 9 of the said Act is pending before the Senior Civil Court, Peddapalli, which is presently a revenue District of Telangana State. However, it is still a part of Karimnagar judicial District. Further, it is trite to note that the provision of Section 19 (iii-a) of the Act, as amended in the year 2003, postulates that in case, the wife is the petitioner, every petition under the said Act shall be presented to the District Court within local limits of whose ordinary civil jurisdiction she is residing on the date of the presentation of her petition. Thus, the statute gives special status to the wife insofar as to the place of suing.

18. On the above analysis, this Court finds that the convenience of the wife should be preferred and shall prevail over the inconvenience, if any, which may be caused to the husband. However, this is a case where the submissions of the husband also require some consideration and his submissions cannot totally be ignored. Therefore, an even-handed view which protects the interest of both the parties and meets the ends of justice has to be taken. In that view of the matter, this Court finds that both the OPs can be brought to the Family Court at Karimnagar District headquarters as the said place being a District headquarters would be relatively easily accessible and convenient to both parties. However, while bringing both the OPs to the file of the said Court, it is necessary to make provision for expenses of the proceedings and the expenses, which the wife has to meet for attending the Court cases at Karminagar. On the above analysis, this Court finds that both the petitions can be disposed of accordingly.

19. In the result, both the Transfer Petitions are disposed of accordingly and the O.P.No.67 of 2017 and O.P.No.37 of 2017 are withdrawn from the respective files of the Family Court, at L.B. Nagar of Ranga Reddy District, and Senior Civil Court, Peddapalli, and are transferred to the Family Court at

District headquarters, Karimnagar, for trial and disposal, either simultaneously or jointly by the said Court, however, in accordance with the procedure established by law. The respondent-husband is directed to pay to the petitioner/ wife Rs.15,000/- [Rupees fifteen thousand only] towards expenses of the proceedings besides Rs.1,000/- [Rupees one thousand only] towards her travel and incidental expenses on each day she attends to the cases now transferred to the Court at Karimnagar. The learned Judge, Family Court, Karimnagar, shall ensure that the husband/respondent makes the above payments to the petitioner/ wife. It is needless to state that the learned Judge of the Family Court at Karimnagar shall permit both the parties to be represented by counsel and shall not insist on their personal appearance in the matters unless such personal appearance is essential for any specific purpose or a purpose envisaged under law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

04.10.2017
Vjl