

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.821 of 2016

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC seeking to withdraw O.P.No.1738 of 2016 from the file of Family Court, Kukatpally at Miyapur and transfer the same to the Family Court, Eluru, West Godavari District.

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

3. The marriage of the petitioner was performed with the respondent on 27.11.2009, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. The petitioner and the respondent lived together for some time at Mumbai, Mysore, Chennai and Hyderabad. Out of the lawful wedlock, they were blessed with two children. Due to one reason or the other, disputes arose between the petitioner and the respondent; therefore, the petitioner has been residing at her parents' house along with her children. While things stood thus, the respondent filed O.P. No.1738 of 2016 on the file of the Family Court, Kukatpally at Miyapur against the petitioner under Section 13(1)(i-a) of the Hindu Marriage Act for dissolution of marriage between them. A perusal of the record reveals that the petitioner filed M.C. No.80 of 2015 on the file of the Court of Judicial Magistrate of First Class, Tanuku against the respondent claiming maintenance under Section 125 of Cr.P.C. The respondent is facing trial in C.C. No.36 of 2014 on the file of the Court of II Additional Judicial Magistrate of First Class, Tanuku for the offences under Section 498-A IPC and Sections 3

and 4 of the Dowry Prohibition Act. Even as per the cause title in O.P. No.1758 of 2016, the petitioner has been residing in Kantheru Village, Iragavaram Mandal, West Godavari District. The distance between Hyderabad and Eluru is around 400 KMs. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner to travel along with her children from Eluru to Hyderabad to prosecute O.P. No.1738 of 2016. Filing of the M.C. by the petitioner itself indicates her financial status. Invariably, the respondent has to attend the Courts at Tanuku, in view of pendency of C.C. No.36 of 2014 and M.C. No.80 of 2015.

4. 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 Sreekanth¹, Sumita Singh v. Kumar Sanjay² and Rachna Kanodia v. Anuk Kanodia³**, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

5. 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 can be granted.

6. The learned counsel for the respondent submitted that the presence of the respondent before the trial court on each and every date of adjournment may be dispensed with. Even if the presence

¹ 2013 (6) ALT 42 (SC)

² AIR 2002 SC 396

³ 2001 (7) Supreme 96

of the respondent before the trial court is dispensed with, no prejudice will be caused to the petitioner.

7. Accordingly, the Transfer CMP is allowed. O.P. No.1738 of 2016 is withdrawn from the file of the Family Court, Kukatpally at Miyapur and transferred to the file of Family Court, Eluru, for disposal in accordance with law. The Family Court, Eluru is hereby directed to dispense with the presence of the respondent in connection with O.P. No.1738 of 2016, on each and every date of adjournment. However, he shall appear before the trial Court as and when his presence is so required. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 03.4.2017
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T. SUNIL CHOWDARY, J

