

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No.164 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw F.C.O.P.No.105 of 2016 pending on the file of the Judge, Family Court, Kurnool, and transfer the same to the file of Judge, Family Court, Kadapa on the ground that the petitioner is residing with her parents at Kadapa and journey between Kurnool and Kadapa is tedious journey and she is not in a position to perform journey from Kadapa to Kurnool while taking care of minor child of six years old and aged parents.

During hearing, learned counsel for the petitioner contended that initially the O.P. was filed before the Judge, Family Court, Secunderabad and the same was registered as O.P.No.236 of 2013 and later it was transferred on the application of this petitioner to Kurnool in Tr.C.M.P.No.43 of 2016 dated 18.07.2016 and the said order became final. But, now as the D.V.C. pending between the parties was disposed of, the petitioner filed the present petition seeking withdrawal and transfer of F.C.O.P.No.105 of 2016 pending on the file of Judge, Family Court, Kurnool to the file of Judge, Family Court, at Kadapa. The grounds which he urged in the present petition are almost identical to the grounds raised in the earlier application, but taking into consideration the life

threat to the respondent, instead of transferring the F.C.O.P. to Kadapa, transferred to Kurnool, where D.V.C. was pending and by that time, the petitioner was staying with her brother at Kurnool. In para – 3 of the order, this Court observed that the request for transfer is to harass him and he is apprehending danger in the hands of the petitioner therein, i.e., the present petitioner, if the case is transferred to Kadapa and at para 7 of the order, this Court took into consideration of pendency of D.V.C. before the Court at Kurnool and apprehension of life threat to the respondent, withdrawn and transferred the O.P.236 of 2013 from Secunderabad Court to Kurnool Court. When the Court declined to transfer the matter to Kadapa in the earlier petition, Transfer C.M.P.No.43 of 2016, the present petition is filed in view of changed circumstances, i.e., disposal of D.V.C. and now the petitioner is staying with her parents at Kadapa. It appears from the request that whenever the petitioner shifted to one place to the other, the F.C.O.P. must also be transferred to the place where she is residing and such request cannot be accepted more particularly, when the respondent apprehending life threat in the hands of the petitioner herein, as observed by this Court in Transfer C.M.P.No.43 of 2016 dated 18.07.2016. That apart, the D.V.C. though disposed of, the appeals are pending before the District Court and therefore, the proceedings in D.V.C. are deemed to be continuing.

One of the contentions raised by the counsel for the petitioner is that the residence of the wife alone be taken into consideration in matrimonial disputes and Court can exercise power under Section 24 of CPC and transfer the O.P. to the Court having jurisdiction, where the wife is staying. This is one of the considerations. But no straight jacket formula can be laid to exercise the power under Section 24 of CPC. However, in recent judgment of Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹, in paragraph 18 of the judgment laid down certain guidelines in the matrimonial cases for withdrawal and transfer, which are as follows:

“18. 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 cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”

¹ JT 2017 (3) SC 190

The guidelines issued by the Supreme Court, indirectly indicates that the parties can be examined by video conferencing or in case, the wife is facing any financial difficulty to attend the Court, the other spouse may be directed to deposit travelling expenses, boarding and lodging expenses and furnish the address particulars and phone number to the District Judge, where he/she is residing. Therefore, the appearance of the petitioner is not imperative on all dates of adjournments, except on the dates when the petitioner is to be examined as a witness before the Court, in the event no facility of video conference is available and in case, no such video conference is available, she can apply for appointment of an advocate commissioner for recording of her cross-examination subject to the decision of the Court as to costs of the Commission etc. In view of the guidelines laid down by the Apex Court in **Krishna Veni Nagam's** case, the matrimonial matters cannot be withdrawn on the ground of inconvenience.

In the present case, no proceedings are pending before the Kadapa Court. It is the submission of the learned counsel for the respondent that since the application filed to set aside the ex parte decree before the Kadapa Court was dismissed and the decree attained finality, when the respondent-husband is facing such life threat as observed by this court, this Court cannot exercise the power to withdraw and

transfer the O.P.No.105 of 2016 pending on the file of the Judge, Family Court, Kurnool and if such request is accepted, it would amount to reviewing the order of this Court while exercising the power under Section 24 of CPC. Considering the facts and circumstances of the case, I find none of the grounds raised by the petitioner are sufficient to withdraw and transfer the FCOP from the file of Judge, Family Court Kurnool to the file of Judge, Family Court, Kadapa in view of the earlier order passed by this Court considering all these grounds.

As the petitioner expressed her inability to perform journey, her appearance before the Judge, Family Court Kurnool is directed to dispense with on all dates of adjournments except on the date when her cross-examination is required to be recorded in case no facility of video conference is available for recording cross-examination or on any other date as fixed by the court for her cross-examination. The difficulty to perform journey from Kadapa to Kurnool is not a ground to withdraw and transfer the O.P.

Viewed from any angle and considering the facts and circumstances of the case, the Judge, Family Court, Kurnool is hereby directed not to insist for appearance of the petitioner on every date of adjournment, except on the date when her cross-examination is required to be recorded and on the date when ever her personal appearance is specifically

required, as long as her counsel representing her and prosecuting the case on her behalf. But, this order would not preclude the Judge to pass any order in accordance with law against the petitioner in the event her counsel failed to represent the case on her behalf.

With the above observation, the transfer civil miscellaneous petition is dismissed. Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.07.2017

Rns

