

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.429 OF 2017

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw H.M.O.P. No.72 of 2015 pending before the Court of Senior Civil Judge, Gudur, SPSR Nellore District, and transfer the same to the Court of Senior Civil Judge, Narasapur, West Godavari District, on the ground that she is unable to undertake journey covering distance of 350 kilometers on every date of adjournment and the second ground is that she has no means to maintain herself and unable to meet the travelling expenses, even if she undertakes journey.

Undisputedly, the petitioner being a lady may face difficulty to undertake journey covering distance of 350 kilometers, that by itself is not a ground to transfer the H.M.O.P., since the proceedings before the court at L.B. Nagar, Ranga Reddy District, are purely civil in nature and her appearance on each and every date of adjournment is not required as long as she is being represented by her counsel and prosecuting the proceedings on her behalf before the court where the O.P. is pending. Even otherwise, her presence is required on the date when her cross-examination is required to be recorded or for any other purpose when the court directed the petitioner for her personal appearance.

In **Krishna Veni Nagam v. Harish Nagam**¹ the Apex Court, at paragraph 18, issued the following guidelines:

¹ AIR 2017 SC 1345

“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 Defendants/ 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.”

The guidelines laid down by the Apex Court, indirectly indicates if the facility of video conference is available, the evidence of witness can be recorded by video conference. If the petitioner has to undertake journey in view of non availability of video conference facility, she may seek appointment of an Advocate-Commissioner to record her evidence and cross-examination, and if for any reason she is facing financial difficulty to undertake journey to appear before the court, the respondent shall be directed to deposit the expenses for travelling, boarding and lodging in terms of order XXV CPC.

Therefore, the Senior Civil Judge, Gudur, SPSR Nellore District, is requested not to insist the appearance of the petitioner on every date of adjournment, except on the dates when her cross-examination is required to be recorded by the court itself or for any other specific purpose, as long as she is being represented by her counsel and prosecuting the proceedings.

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This direction would not preclude the Senior Civil Judge, Gudur, SPSR Nellore District, to pass any order against the petitioner, in the event, the counsel for the petitioner did not represent and prosecute the proceedings on her behalf.

In view of the above discussion, I find no ground to withdraw and transfer the H.M.O.P. No.72 of 2015 pending on the file of Senior Civil Judge, Gudur, SPSR Nellore District.

In the result, the transfer civil miscellaneous petition is disposed of with the above direction. No costs.

Miscellaneous petition, if any, pending in the transfer civil miscellaneous petition shall stand closed.

11.07.2017
BV

M.SATYANARAYANA MURTHY, J

