

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.800 of 2016

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC seeking to withdraw O.P.No.1306 of 2016 from the file of Additional Family Court-cum-XVI Additional Judge, Malkajgiri, Ranga Reddy District and transfer the same to the Family Court, Vijayawada.

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 13.3.2011 at Sri Lalita Mani Kanyana Mandapam, Vijayawada as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of the lawful wedlock, the petitioner and the respondent were blessed with a son. For one reason or the other, disputes arose between the parties. The petitioner left the matrimonial home and has been residing at her sister's house in Vijayawada. The petitioner filed M.C. No.200 of 2013 against the respondent seeking maintenance under Section 125 of Cr.P.C., on the file of the Family Court, Vijayawada. The respondent filed O.P. No.1024 of 2013 on the file of the Family Court, Ranga Reddy District at L.B. Nagar against the petitioner under Section 13 of the Hindu Marriage Act for dissolution of the marriage. The petitioner filed Transfer C.M.P. No.464 of 2013 before this Court to transfer O.P. No.1024 of 2013 from the file of the Additional Family Court, Malkajgiri, to the file of the Family Court, Vijayawada. This Court by order dated 21.11.2013 allowed the Transfer C.M.P., and on such transfer, it was renumbered as

Transfer C.M.P. No.49 of 2014. The respondent has withdrawn Transfer C.M.P. No.49 of 2014.

4. Thereafter, as submitted by the learned counsel for both the parties, the petitioner and respondent lived for some time and blessed with second son. Again, the disputes arose between the petitioner and the respondent; therefore, the petitioner has been residing at her sister's house in Vijayawada. The respondent filed O.P. No.1306 of 2016 on the file of the Additional Family Court-cum-XVI Additional Judge, Malkajgiri, Ranga Reddy District against the petitioner under Section 9 of the Hindu Marriage Act.

5. It is not in dispute that the children are with the petitioner. The petitioner may face difficulty to travel along with children from Vijayawada to Hyderabad in order to prosecute O.P. No.1306 of 2016. Invariably the respondent has to appear before the Family Court, Vijayawada to prosecute M.C. No.200 of 2013. It is not uncommon to make allegations and counter allegations by the parties to the proceedings more particularly in family matters. Therefore, this court is not inclined to go into merits of the main case.

6. 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 **Sumita Singh v. Kumar Sanjay**¹ and **Rachna Kanodia v. Anuk Kanodia**², the

¹ AIR 2002 SC 396

² 2001 (7) Supreme 96

paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

7. 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.

8. As rightly pointed out by the learned counsel for the respondent, the respondent may face some difficulty to attend the Family Court, Vijayawada on each and every date of adjournment. Even if the presence of the respondent before the Family Court, Vijayawada is dispensed with, no prejudice will be caused to the petitioner.

9. Accordingly, the Transfer CMP is allowed. O.P. No.1306 of 2016 is withdrawn from the file of the Additional Family Court-cum-XVI Additional Judge, Malkajgiri, Ranga Reddy District and transferred to the file of Family Court, Vijayawada, for disposal in accordance with law. The Family Court, Vijayawada is hereby directed to dispense with the presence of the respondent-husband in connection with O.P. No.1306 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.

T. SUNIL CHOWDARY, J

Date: 06.3.2017
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