

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION NO.323 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw O.P.No.191 of 2016 on the file of Principal District Judge, Guntur and to transfer the same to any Court in Khammam having jurisdiction on the following grounds:

- (i) that D.V.C.No.3 of 2017 and a case in crime No.91 of 2016 under Sections 498-A, 420 and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act filed by the petitioner are pending on the file of the I Additional Judicial First Class Magistrate, Khammam;
- (ii) that being a woman, it is difficult for her to undertake journey from Khammam to Guntur, to appear before the Court on all dates of adjournments and she did not possess any means to meet the expenditure for travelling, etc.

2. The first and foremost ground for withdrawal and transfer of O.P. is that D.V.C.No.3 of 2017 and a criminal case are pending on the file of the I Additional Judicial First Class Magistrate, Khammam. Pendency of O.P. at a place different from where the petitioner-wife is residing is not a ground for transfer because the D.V.C. is being tried or enquired by JFCM, Khammam, who cannot enquire into the marriage O.P.

3. The second ground is that the petitioner is unable to undertake journey from Khammam to Guntur on every date of adjournment. No doubt, it is difficult for a woman to undertake journey on every date of adjournment. But that by itself is not a

ground to withdraw and transfer the case, since the *forum non conveniens* based on the principle laid down in **Modi Entertainment Network and another v. W.S.G. Cricket Pte.Ltd**¹ is not a ground in view of latest Judgment of the Hon'ble Apex Court in **Krishna Veni Nagam v. Harish Nagam**², where the Hon'ble Apex Court issued certain guidelines to the Judges, which reads thus:

“Spirit behind the orders of this Court in allowing the transfer petitions filed by wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship. Our Constitutional scheme provides for guaranteeing equal access to justice, power of the State to make special provisions for women and children and duty to uphold the dignity of women. Various steps have been taken in this direction. However, the Apex Court also issued certain directions in para 18 of its judgment, which read thus:

- 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.”

In view of the above guidelines, the inconvenience for the petitioner to undertake journey may not be a ground to withdraw and transfer O.P.No.191 of 2016 from one Court to another and at best, the witness can be examined by video conference. However,

¹ (2003) 4 SCC 341

² AIR 2017 SC 1345

in view of difficulty expressed by the petitioner to undertake journey from Khammam to Guntur, the Principal District Judge, Guntur, is directed not to insist the petitioner to appear on every date of adjournment, except on the dates when her presence is required, more particularly when the petitioner is required to be cross-examined by the counsel for the respondent. This direction would meet the ends of justice and serve the purpose.

3. In view of the law declared by the Apex Court in **Krishna Veni Nagam's** case (referred supra), the Principal District Judge, Guntur is directed to follow the guidelines issued in the said case and permit the counsel for the respondent to cross-examine the petitioner and witness on her behalf by video conference and in case, video conference is not available, the Principal District Judge shall direct the respondent to deposit costs of travelling, boarding, lodging and other incidental expenses to the credit of O.P. and on such deposit, the petitioner shall appear before the Court on the date when her presence is required for cross-examination or any other purpose.

4. With the above direction, the Transfer Civil Miscellaneous Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUNE 07, 2017
ssp

M. SATYANARAYANA MURTHY, J