

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.414 OF 2017

ORDER:

This transfer civil miscellaneous petition, under Section 23(2) of the Civil Procedure Code, 1908 (for short 'CPC'), is filed to retain H.M.O.P. No.54 of 2016 on the file of Senior Civil Judge, Mangalgiri, without transferring the same to the Judge, Family Court, Guntur, by recalling the order dated 11.04.2017 passed in Tr.C.M.P. No.21 of 2017 on the ground that the pendency of the Judge, Family Court, Guntur, is heavier than the pendency before the Senior Civil Judge, Mangalgiri.

The petitioner filed H.M.O.P. No.54 of 2016 under Section 13(1)(ia)(ib) of the Hindu Marriage Act to dissolve the marriage on various grounds. The officer was under suspension in Senior Civil Judge's Court, at Mangalagiri and hence the chances to dispose of the matter immediately are bleak, the petitioner moved an application before this court in Tr.C.M.P.No.21 of 2017 and by order dated 11.04.2017 this court withdrawn H.M.O.P. No.54 of 2016 and transfer the same to the Judge, Family Court at Guntur, for disposal in accordance with law.

The present petition is filed to retain H.M. O.P. No.54 of 2016 before the Senior Civil Judge, Mangalagiri, on the ground that now the officer at Senior Civil Judge's Court at Mangalagiri is posted and the record is not yet forwarded to the Judge, Family Court at Guntur and hence requested to recall the order dated 11.04.2017 in Tr.C.M.P.No.21 of 2017.

Section 23 of CPC deals with to what court application lies and sub-section (2) of Section 23 of CPC made it clear that where such courts are subordinate to different appellate courts but to the same high court, the application shall be made to the said high court.

But, in this matter conveniently when the officer was placed under suspension, the petitioner sought for withdrawal and transfer of H.M.O.P. No.54 of 2016 and after ordering transfer the O.P. to the Judge, Family Court, Guntur, again filed the present petition on the ground that there are no chances of disposal of the matter immediately.

The petition was filed in the year 2016 and immediately sought for withdrawal. When the matter was withdrawn and transferred at the instance of the petitioner by filing transfer CMP, again the matter cannot be retained in the court of Senior Civil Judge, as per convenience due to passage of time, unless the order passed by this court is reversed.

Therefore, to wipe out the apprehension that there is no possibility of disposal of the O.P., the Judge, Family Court, Guntur, is directed to decide the application in accordance with law, as expeditiously as possible, in any event not later than six months from the date of receipt of a copy of this order and since the record is retained in the court of Senior Civil Judge, Mangalgiri, allegedly, the Senior Civil Judge, Mangalgiri, is directed to send the record immediately to the Judge, Family Court, Guntur, and the registry is directed to communicate the order to that effect.

With the above direction, the transfer civil miscellaneous petition is disposed of at the stage of admission. No costs.

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

M.SATYANARAYANA MURTHY, J

Date: 03.07.2017

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