

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.82 of 2017

ORDER:

This petition is filed under Section 24 of C.P.C., seeking to withdraw O.P.No.295 of 2016 from the file of the Family Court, City Civil Courts at Hyderabad, and transfer the same to the file of the Family Court, Vijayawada, Krishna District.

2. Heard the learned counsel for both parties and perused the material available on record including the counter filed by the respondent.

3. The contention of the learned counsel for the petitioner is two fold: (1) the respondent filed the petition by suppressing the material facts; and (2) there is a life threat to the petitioner if he attends the Family Court at Hyderabad.

4. *Per contra*, the learned counsel for the respondent submitted that the respondent is not in a position to travel from Hyderabad to Vijayawada as she is having son aged about 15 months. He further submitted that Vijayawada is not a native place of the petitioner or respondent; therefore, the relief sought by the petitioner deserves to be rejected.

5. A perusal of the record reveals that the marriage of the respondent was performed with the petitioner on 03.05.2015 at Tirumala Tirupathi Devasthanam, Tirumala, as per Hindu Rites and Caste Customs. Immediately after the marriage, the respondent joined the petitioner to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with a son

aged about 15 months. Unfortunately, bad weather prevailed in the family life of the respondent; therefore, she has been residing at her parents' house in Hyderabad along with her son. The respondent filed O.P.No.295 of 2016 on the file of the Family Court, City Civil Courts at Hyderabad, under Section 9 of the Hindu Marriage Act, 1955, against the petitioner for restitution of conjugal rights. Basing on the complaint lodged by the respondent, the concerned Station House Officer registered a case in Crime No.697 of 2015 against the petitioner for the offences punishable under Section 498-A of I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, 1961. The respondent filed D.V.C.No.93 of 2016 on the file of the IV Metropolitan Magistrate at Erramanzil, Hyderabad, against the petitioner and his family members. The distance between Vijayawada and Hyderabad is around 250 K.M.

6. It is the case of the respondent that she is not in a position to travel from Hyderabad to Vijayawada along with her 15 months son without the assistance of one of the male members of the family.

7. The contention of the learned counsel for the petitioner is that the respondent filed O.P.No.295 of 2016 and D.V.C.No.93 of 2016 with all false and frivolous allegations.

8. Learned counsel for the petitioner extensively argued the matter by referring to each paragraph of the affidavit and other relevant documents touching the merits of the main case. It is needless to say that while deciding the transfer petitions, the Court is not supposed to express any opinion touching the merits of the main case. The various contentions raised by the learned counsel

for the petitioner involve complexity of disputed questions of fact, which cannot be gone into while deciding the transfer petitions. While deciding the transfer petitions, the Court has to consider the convenience of the parties to the proceedings, more particularly, to the wife and children. It is not in dispute that the petitioner has been working as Field Assistant in Additional District Court at Narsapuram. Absolutely, there is no material on record to prove that the respondent is having any source of income. In such circumstances, the respondent may face some difficulty to travel from Hyderabad to Vijayawada. As rightly pointed out by the learned counsel for the respondent, Vijayawada is not a native place of the petitioner or respondent. The apprehension of the petitioner is that there is a life threat to him if he attends the Family Court at Hyderabad. The apprehension of the petitioner is not supported by any material much less legally admissible material.

9. In order to appreciate the rival contentions, this Court is placing reliance on the decisions in **T.Gayatri Devi v. Dr. Tallepaneni Sreekanth**¹, **Rachna Kanodia v. Anuk Kanodia**² and **Sumita Singh v. Kumar Sanjay and another**³. As per the principle enunciated in the cases cited supra, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

10. Invariably, the petitioner has to attend the Criminal Courts at Erramanzil, Hyderabad in order to prosecute D.V.C.No.93 of 2016, and another criminal case, which are pending against him.

¹ 2013 (6) ALT 42 (SC)

² 2001 (7) Supreme 96

³ AIR 2002 SC 396

Taking into consideration the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the considered view that it is not a fit case to allow the transfer petition. Hence, the petition lacks merits and *bona fides*.

11. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.04.2017
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