

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI
Transfer Civil Miscellaneous Petition No.616 of 2016

ORDER:

This is an application under Section 24 of the Code of Civil Procedure, 1908, by the petitioner-wife requesting to withdraw HMOP.No.71 of 2016 on the file of the Court of the learned Principal Senior Civil Judge, Gudivada of Krishna District and transfer the same to the Court of the learned Principal Senior Civil Judge at Ongole of Prakasam District.

2. I have heard the submissions of Sri K. Ananda Rao, learned counsel for the petitioner-wife, and of Sri Y. Koteswara Rao, learned counsel for the respondent-husband. I have perused the material record.

3. Shorn of un-necessary details with regard to the rival contentions related to the issues which have to be determined after full fledged trial, the relevant material pleadings of the parties, in brief, are as follows:

The case of the petitioner: - 'The petitioner is the wife of the respondent. After disputes and estrangement between the spouses, the respondent filed HMOP.No.71 of 2016 in the afore-stated Senior Civil Court at Gudivada seeking dissolution of the marriage between the parties. The petitioner is working as a Panchayat Secretary of Kothapet cluster Panchayat of Gudlur Mandal and is residing at Kothakota village. Her male child is under the care and custody of her parents at Kothakota village of N.G.Padu Mandal of Prakasam District. The distance between Ongole to Gudivada is 200 KMs. The distance from Gudluru to Gudivada is 267 KMs. For undertaking journey either from Ongole to Gudivada, that is from District headquarters to Gudivada or from Gudlur to Gudivada, she has to obtain leave by putting her job to risk. She is attending to her minor child, who is under the care of her parents, while attending to her job and at the same time she is required to pay attention to the Court case pending in the Court at Gudivada. In the matter of transfer of matrimonial matters, convenience of wife should be considered, as per the

judgments of the Supreme Court. The respondent-husband intentionally filed the case in the Court at Gudivada only to harass this petitioner. The parents of the respondent are natives of Kothakota village, Naggulupalapadu Mandal of Prakasam District. Due to their employments they are residing at Vuyyuru. The respondent is having large followers at Vuyyuru and Gudivada, since his parents worked at those places as Teachers. He is having much influence amongst the local public. Taking advantage of the said situation, he and his parents are threatening the petitioner with dire consequences in case the petitioner failed to yield their demands. There is a threat of life to the petitioner at the hands of the respondent and his parents. Therefore, she cannot go to Gudivada to contest the case. Hence, it is just and necessary to grant the request of the petitioner.'

The case of the respondent: 'It is true that the petitioner is working as a Panchayat Secretary. However, she is residing at Nellore and is travelling up and down daily from Nellore to Gudluru since the distance between Nellore and Gudluru is a short distance than the distance between Kothakota village and Gudluru. The son of the parties is staying with his maternal grand parents at Kothakota village. Since the petitioner is not residing at Ongole, her request cannot be entertained. The petitioner admitted in her reply legal notice, dated 28.04.2016, that she has tentatively kept her child with her parents as she has to travel from Nellore to Gudluru and that she has been travelling from Nellore to Gudluru and that she is staying at Nellore to appear for competitive examination to get higher grade posts either in State or Central Government services or in Corporations, that is, public sector undertakings and as best coaching centres are available at Nellore, which is nearer to Gudluru. This respondent also re-iterated in his pleadings that the petitioner is residing at Nellore with one Srikanth Reddy of Nellore and is going to Gudluru to attend her job by keeping the son with her parents. The respondent is having life threat at the hands of the petitioner and the said Srikanth Reddy, with whom

the petitioner is leading adulterous life. The Supreme Court stated that the petitions filed by the wife for transfer of cases shall not be disposed of in favour of the wife without critically examining the 'forum of convenience'. The presence of the petitioner is not required on each and every date of hearing. She has to appear only at the time of cross examination of this respondent and at the time of giving her evidence. The matrimonial case can be filed at a place where the marriage took place or at a place where the husband and wife last lived together. Therefore, he filed the OP at Gudivada which is the place where both the parties last resided together. This respondent is residing at Vuyyuru. Hence, the petition may be dismissed.'

4. At the hearing, learned counsel for the petitioner while reiterating the contentions of the petitioner *inter alia* submitted that at the time of issuance of reply notice the petitioner was staying at Nellore but as on date of filing of the petition and at present she is residing at Gudluru and that as she is an employed lady and is taking care of her son, it is very difficult for her to obtain leaves and undertake travel to the Court at Gudivada which is at a distance of 200 KMs from Ongole and 267 KMs from Gudluru, the place of work of the petitioner. He would also submit that at Gudivada she has life threat at the hands of the respondent and his parents, who are having high influence at that place.

5. Per contra, the learned counsel for the respondent while reiterating the case of the respondent would submit that in the affidavit filed in support of the transfer petition, the petitioner has only stated that she is native of Kothakota and that she came down to Hyderabad for giving affidavit but she did not state that she is a resident of Nellore and, therefore, she suppressed the actual place of residence, that is, Nellore. He would further submit that the respondent-husband is having a life threat at the hands of the petitioner and one Srikanth Reddy with whom the petitioner is leading an adulterous life. He

would also submit that since the respondent is staying at Vuyyuru he filed the matrimonial OP in the Court at Gudivada, where the parties last lived together and the said case cannot be transferred to Ongole, where neither of the parties are residing and as the petitioner is residing at Nellore from which place there is travel convenience to her place of work and as at that place there are coaching centres at which she is preparing for competitive examinations for securing higher positions in her career. He would further submit that the petitioner is a working woman and hence, she needs no financial assistance for meeting the travelling expenses and that in any view of the matter, if any travelling expenses are to be paid on the days she is required to travel from her place of residence or place of work to the Court at Gudivada, the respondent is prepared to bear the reasonable expenditure and that she, being a working lady, can undertake travel all alone and she is in-fact travelling from one place to another all alone and since she has kept her son with her parents, her contention that she is attending on her child is not correct.

6. I have bestowed my attention to the facts and submissions. Learned counsel for the respondent placed reliance on a latest decision of the Supreme Court in Krishnaveni Nagam v. Harish Nagam¹ wherein the Supreme Court suggested alternative to transfer of proceedings on account of inability of a party to contest the proceedings at a place away from his/her ordinary residence. In the said citation, the Supreme Court held as follows: - '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 defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent

¹ 2017 LAwSuit(SC) 195

along with the summons. The safeguards can be:- i) Availability of Video conferencing facility; ii) Availability of Legal Aid service; iii) Deposit of costs for travel, lodging and boarding in terms of Order XXV CPC; and, iv) e-mail address/phone number, if any, at which litigant from outstation may communicate.' In the case on hand, the petitioner is a working lady. She had already engaged a counsel. She is not seeking any legal aid service at least at this stage. Her son is under the care and custody of her parents, who are residing at a different place. The facts borne out by record show that she is working as a Panchayat Secretary at Gudluru of Prakasam District and that she is residing at Nellore as that place is at a short distance from the place of work and as she is attending to coaching centres at Nellore while preparing for competitive examinations with a view to secure higher positions in career. It is not her case that she cannot undertake travel all alone. As rightly contended by the respondent, she need not attend the court case at Gudivada on every date of adjournment as she has already engaged a counsel; and, her presence may at best be required on the date, her counsel cross examines the respondent and on the date she is required to give evidence. Therefore, her presence may be required in the Court at Gudivada only on a few dates of hearing of the case. The husband is also prepared to bear the cost of travel and incidental expenses of the petitioner. At the court complexes at Nellore, Ongole and Krishna, there are video conferencing facilities. Therefore, there is a possibility for recording the evidence of the petitioner herein by use of video conferencing facility.

7. Though the petitioner contends that there is a life threat for her at Gudivada, it is not the case of the petitioner that there were previous instances of serious threats or assaults against her by the members of the family of the respondent. In fact, the respondent also stated that there is a life threat for him at the hands of the petitioner and one Srikanth Reddy, with whom the petitioner is leading adulterous life. Though both parties voiced apprehensions

with regard to their safety in case they are required to go to the place of the other spouse, such allegations and counter allegations are not uncommon in matters of this nature and as observed by the Supreme Court in *Sangeeta @ Shreya v. Prasant Vijay Wargiya* [(2004) 13 SCC 407], any threat to him/ her can always be reported to the Court concerned for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication. Therefore, the contentions of the petitioner or the respondent with regard to life threats do not merit consideration.

8. Before parting, be it noted that the learned counsel for the petitioner relied upon the following decisions: (i) *Amita Shah v. Virender Lal Shah*² is relied upon in support of the proposition that the convenience of the wife and more particularly the minor child of the marriage must be taken into account. (ii) In *Bhartiben Ravibhai Rav v. Ravibhai Govendbhai Rav*³ the Supreme Court considered the request of the wife for transfer of a case from a Court at Ahmedabad of Gujarat State to the Court of the District Judge, Dungarpur of Rajasthan though such request for transfer was opposed by the husband on the ground that he is employed in Ahmedabad and that he is taking care of his two sons apart from his old aged parents. The decision in the cited case, it appears is made having regard to the facts peculiar to the case. Moreover, in view of the facts peculiar to the instant case, the decisions relied upon by the petitioner are not helpful to the petitioner.

9. On the above analysis of the facts, this Court finds that this is not a fit case to consider the request of the petitioner-wife and, therefore, the transfer civil miscellaneous petition is liable for dismissal.

10. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. However, since the respondent-husband has undertaken to meet the travelling and incidental expenses of the petitioner-wife on the dates she attends the

² (2003) 10 SCC 609

³ (2017) 6 SCC 785

Court case pending in the Court at Gudivada of Krishna District, he shall pay Rs.800/- (Rupees eight hundred only) to her under proper acknowledgment on every such date of her appearance before the Court at Gudivada.

There shall be no order as to costs.

Miscellaneous petitions pending if any shall stand closed.

JUSTICE M. SEETHARAMA MURTI

05.09.2017
VjI

