

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.317 of 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw O.P.No.175 of 2016 pending on the file of Senior Civil Judge, Rajamahendravaram, East Godavari District and transfer the same to any competent Court at Visakhapatnam on the ground that the distance between the Rajamahendravaram and Visakhapatnam is more than 400kms, hence, the petitioner being a woman, she is unable to undertake journey to appear before the Court at Rajamahendravaram on every date and that too she has no means to meet the expenses for traveling i.e. boarding, lodging etc to attend the Court.

During hearing, learned counsel for the petitioner reiterated the grounds raised in the affidavit filed in support of the petition.

Learned counsel for the respondent opposed the petition.

The respondent filed O.P under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty making certain allegations. The only difficulty expressed by the petitioner that she cannot undertake journey covering 400 kms from Rajamahendravaram to Visakhapatnam to attend the Court. In fact, the distance between Rajamahendravaram and Visakhapatnam is less than 200 kms and nearby District to the East Godavari District. However, appearance of the petitioner on every date of adjournment is not necessary since it is a civil proceeding and therefore, she can engage counsel and prosecute the proceedings. Even in her absence, the advocate can proceed with the trial except for recording her cross-examination. The petitioner is unable to meet the expenses to attend the Court but such ground is no more available in view of the judgment of

the Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹ where the Apex Court framed the following guidelines:

“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 along with the summons. The safeguards can be:-

- 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 above guidelines, inconvenience to undertake journey may not be a ground to withdraw and transfer O.P. from one Court to another and since she can be examined by video conference and distance is not a matter. However, in view of difficulty expressed by the petitioner, the Senior Civil Judge, Rajahmahendravaram, is directed not to insist the petitioner to appear on every date of adjournment, except on the dates where her presence is required. This direction would not preclude the Court to pass any order against the petitioner in accordance with law for her failure to get the proceedings prosecuted through her counsel. If no facility of video conference is available, when the petitioner's presence is required, the respondent may be directed to deposit travelling, lodging, boarding and other incidental expenses vide guideline No.2 and furnish other details like address etc. to contact the petitioner vide guideline No.3. On such deposit, the petitioner shall appear before the Court on the date when her presence is required for cross-examination or for any

¹ AIR 2017 SC 1345

other purpose. This direction would meet the ends of justice to serve the purpose.

With the above direction, the Transfer Civil Miscellaneous Petition is disposed of.

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

M. SATYANARAYANA MURTHY J

Date: 23.06.2017
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