

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 404 OF 2017

AND

TRANSFER C.M.P.No. 405 OF 2017

COMMON ORDER:

These petitions under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') are filed by wife to withdraw F.C.O.P.Nos.650 and 652 of 2016 pending on the file of Judge, Family Court, Visakhapatnam and transfer the same to the Court of Senior Civil Judge, Sompeta or Family Court , Srikakulam District.

The petitioner contended that she is resident of Sompeta, Srikakulam District, whereas O.Ps are pending at Visakhapatnam, which is far away to the place of her residence i.e. 170 kms. It is also contended that she is unable to undertake journey covering distance of 170 kms while attending her child and old aged parents and that she has no means to maintain herself. Therefore, it is difficult for her to defend the proceedings at Visakhapatnam.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the petitions at the stage of admission.

The respondent filed petition under Section 32 of the Divorce Act, 1869 for restitution of conjugal rights and also filed petition under Sections 7 and 10 of the Guardians and Wards Act, 1890 to appoint him as guardian of the minor girl 'Diya Catherrine', aged (8) years, who is in care and custody of the petitioner herein, pending before the Judge, Family Court, Visakhapatnam.

The only grievance of the petitioner is that her inability to undertake journey covering distance of 170 kms to attend the Court on every date of adjournment.

No doubt, the petitioner being a woman cannot undertake journey frequently covering distance of 170 kms and it is difficult for her to undertake journey on every date of adjournment with her child. But that itself is not a ground to withdraw and transfer the case. The Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹ 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 as she can be examined by video conference and distance is not a matter. If no facility of video conference is available, when the

¹ AIR 2017 SC 1345

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

In view of difficulty expressed by the petitioner, the Judge, Family Court, Visakhapatnam, is directed to decide both the matters simultaneously to avoid her frequent appearance before the Court and not to insist the petitioner to appear on every date of adjournment, except on the dates where her presence is required for recording her cross examination or for any other purpose. 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.

With the above direction, the Transfer Civil Miscellaneous Petitions are disposed of. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date: 28-06-2017.
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