

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.477 of 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') is filed to withdraw H.M.O.P.No.36 of 2015 from the file of Senior Civil Judge, Gudur, SPSR Nellore District, and transfer the same to the file of Senior Civil Judge, Rajampet, Kadapa District, on the ground that the petitioner is living with her parents at Rajampet and she is unable to undertake journey covering the distance of 120 km; that she has no means to meet the expenses for travelling in connection with the aforesaid H.M.O.P.

2. The ground urged by the petitioner for transfer of the O.P., is that she is unable to undertake journey covering distance of 120 km from Rajampet to Gudur. The O.P, which is pending before Court of Senior Civil Judge, Gudur filed under Section 13 (i) (ia) of the Hindu Marriage Act, is purely civil in nature and her presence is not required on every date of adjournment, as long as, she is being represented by her counsel and prosecuting her case. Even in recent judgment in **Krishna Veni Nagam v. Harisha Nagam**¹, the Hon'ble Apex Court issued certain guidelines to the Judges, which read thus:

“Spirit behind the orders of this Court in allowing the transfer petitions filed by wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship. Our Constitutional scheme provides for guaranteeing equal access to justice, power of the State to make special provisions for women and children and duty to uphold the dignity of women. Various steps have been taken in this

¹ AIR 2017 SC 1345

direction. However, the Apex Court also issued certain directions in para 18 of its judgment, which read thus:

- 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.”

The direction issued by the Apex Court indirectly indicates that the evidence of a party in matrimonial cases can be recorded by video conferencing and if no such facility is available, the party shall appear before the Court for recording cross-examination. Therefore, at best, the petitioner may be required to appear before the Senior Civil Judge Court, Gudur, for recording her cross-examination, but her appearance on every date of adjournment is not necessary. Therefore, difficulty of the petitioner to travel long distance on each and every date of adjournment of the case would not arise.

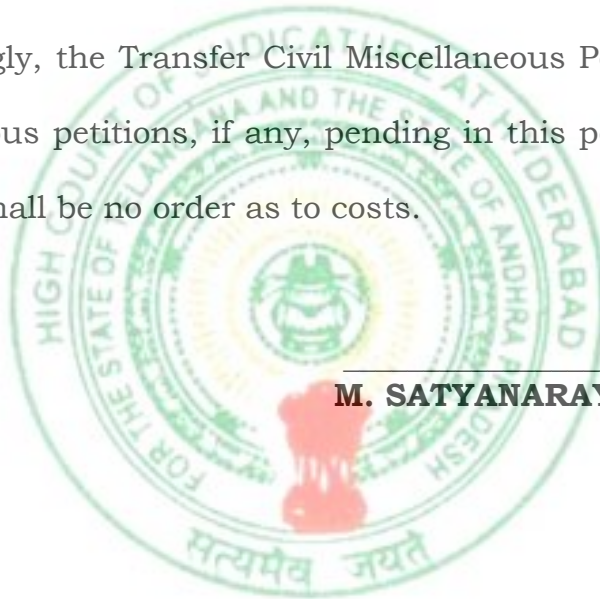
The other contention of the petitioner is that she is unable to meet the expenses for travelling, lodging and boarding whenever she attends the Senior Civil Judge Court, Gudur. No doubt, the petitioner being a house-wife may not be in a position to meet the expenses except she possessed properties of her own having independent source of income. But, lack of means to meet the expenses by itself is not a ground to transfer the O.P., since the respondent is bound to pay the expenses for travelling, boarding and lodging in terms of Order XXV CPC. Therefore, the Senior Civil Judge, Gudur, is directed to insist the respondent for payment of expenses for travelling, lodging and boarding whenever the petitioner attends the Court in connection with the subject O.P. On such deposit, the petitioner is required to appear before the Court either for recording cross-examination or for any other purpose as directed by the Senior Civil Judge, Gudur.

3. In view of difficulty expressed by the petitioner, Senior Civil Judge, Gudur, is requested not to insist for appearance of the petitioner on every date of adjournment as long as her counsel represents and prosecutes the proceedings, except on the date when her presence is required before the Court to record cross-examination or for any other purpose in connection with the above O.P., if no facility of video conferencing is available. But, this direction would not preclude the Senior Civil Judge, Gudur, from passing any order in accordance with law against the petitioner, in the event her counsel failed to represent and prosecute the case on her behalf.

4. Accordingly, the Transfer Civil Miscellaneous Petition is disposed of. Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

JULY 27, 2017
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M. SATYANARAYANA MURTHY, J



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Date: 27.07.2017

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