

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No. 481 OF 2017

ORDER:

This transfer petition is filed under Section 24 of CPC to withdraw FCOP No.547 of 2016 pending on the file of the Judge, Family Court, Guntur and transfer the same to the Court of Senior Civil Judge, Kakinada, East Godavari District on the ground that she is unable to perform journey covering distance of more than 300 kms. from Kakinada to Guntur while taking care of children who are aged 4 and 3 years respectively.

2. The second ground urged is that the petitioner filed maintenance case in M.C.No.25 of 2017 on the file of the V Additional Judicial Magistrate of First Class, Kakinada and thereby she has no means to meet the expenses for travelling boarding and lodging whenever she attends Court at Guntur.

3. The first and foremost ground urged before this Court is that she is unable to perform journey covering distance of more than 300 kms. on every date of adjournment before the Family Court at Guntur. No doubt, it is difficult task for any woman to perform journey covering more than 300 kms. to appear before the Judge, Family Court, at Guntur on every date of adjournment. But, that by itself is not a ground to withdraw and transfer the case in view of the guidelines issued by the Apex Court in KRISHNA VENI NAGAM V. HARISH NAGAM¹ 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

¹ AIR 2017 SC 1345

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."

4. 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, since she can be examined by video conference and distance is not a matter. 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 other purpose. This direction would meet the ends of justice and serve the purpose.

5. Therefore, the judgment of the Apex Court indirectly indicated that the distance is not a ground to withdraw and transfer the petition from one court to another and she can be examined by video conference or otherwise appearance can be dispensed with before the Judge, Family Court, at Guntur except on the date when her cross examination is required to be recorded in the event no video conference facility is available. Therefore, on the ground of inability to perform journey covering distance of 300 kms. in FCOP No.547 of 2016 pending on the file of the Judge, Family Court at Guntur, cannot be withdrawn and transferred.

6. The other ground urged is that M.C.No.25 of 2017 on the file of the V Additional Judicial Magistrate of First Class, Kakinada and also lodged a

complaint with Women Police Station against the respondent and others for the offence punishable under Section 498-A r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act. The complaint is under investigation and moreover, maintenance case is pending before the V Additional J.F.C.M., Kakinada in MC No.25 of 2017. The pendency of maintenance case under Section 125 Cr.P.C. not a ground since two matters cannot be tried together by one court and M.C. has to be enquired under the provisions of Cr.P.C.; whereas, FCOP has to be enquired under the provisions of C.P.C. Therefore, the question of their clubbing together etc. would not arise and mere appearance of the respondent in M.C. is by itself is not a ground and it is for him to take necessary steps. Therefore, I find that pendency of M.C. and Crime No.10 of 2017 against the respondent and others for the offences punishable under Sections 498-A r/w 34 IPC is not at all a ground to withdraw and transfer OP No.547 of 2016 pending on the file of the Judge, Family Court, Guntur.

7. The third ground is that she is unable to meet the expenses for travelling, lodging and boarding. In the judgment referred above, the respondent shall be directed to deposit travelling expenses, lodging and boarding whenever she attends the court in connection with the case pending before the Judge, Family Court, at Guntur and on such deposit or payment, she is bound to appear before the Court or on any other day whenever directed by the Judge, Family Court for her personal appearance. Therefore, lack of means is not a ground to withdraw and transfer the case.

8. In any view of the matter, taking into consideration of difficulty expressed by the petitioner in appearing before the Judge, Family Court, Guntur, I deem it appropriate to direct the Judge, Family Court, Guntur not to insist appearance of the petitioner on every date of adjournment

except on the day when her cross examination is required to be recorded or any other day when her personal appearance is ordered by the Judge, Family Court, Guntur, subject to payment of travelling expenses, boarding and lodging expenses in terms of Order XXV CPC, as long as she being represented by her counsel, prosecuting her case on her behalf. But, this order will not preclude the Judge, Family Court, Guntur to pass any order in accordance with law against the petitioner, in the event, the petitioner's counsel did not represent and prosecute the proceedings on her behalf.

With the above direction, the Tr.CMP is disposed of. There shall be no order as to costs.

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

DATE: 28-07-2017
ccm



M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



Tr.C.M.P.No. 481 OF 2017

Date:28.07.2017

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