

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.No.434 OF 2017

ORDER:

This petition is filed to withdraw O.P.No.64 of 2017 pending on the file of Additional Senior Civil Judge, Tenali, and to transfer the same to the District Court, Visakhapatnam on the ground that she is facing life threat whenever she attend the Court and the second ground is that she has no means to meet the expenses for traveling, boarding and lodging to appear before the Court at Tenali.

The petitioner filed the present petition mainly on two grounds. First ground is that she being a woman unable to perform journey covering more than 500 Kms. Petition is pending before the Additional Senior Civil Judge, Tenali is purely in civil nature and her presence on every date of adjournment is not required. At best her presence is required when her cross-examination is required to be recorded or for any other specific purpose when the Court directed her to appear before the Court, as long as her counsel is representing her case and prosecuting the case on her behalf. Even otherwise her cross-examination can be recorded by videoconference and if such facility is not available, her husband-respondent herein shall deposit the expenses for traveling, boarding and lodging in terms of Order XXV of Code

of Civil Procedure. In **Krishna Veni Nagam v. Harish Nagam**¹, the Supreme Court in paragraph 18 of the judgment laid down certain guidelines in the matrimonial cases for withdrawal and transfer, which are as follows:

“18. 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 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 CPC.*
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”*

Therefore, inability to perform journey covering more than 500 Kms., is not a ground to withdraw and transfer the petition, since, the above judgment indirectly indicated the other methods to be followed for transfer due to any inconvenience.

¹ JT 2017 (3) SC 190

The other ground is that she is facing life threat whenever she is attending the Court at Tenali. But she did not specify any specific instance when she was subjected to such threat and no complaint was lodged against the respondent to the police whenever she was subjected to such threat or atleast she did not complain to the Presiding Officer of the Court about such threat. However, if she is really facing such threat she is at liberty to give complaint to the police or to the Presiding Officer of the Court. If such complaint is lodged with the Presiding Officer of the Court, the Presiding Officer is requested to provide necessary police protection to the petitioner whenever she attends to the Court in connection with the petition, subject to decision of the Court as to expenses for such protection.

In view of the facts and circumstances stated above, the Additional Senior Civil Judge, Tenali is requested not to insist the appearance of the petitioner herein on every date of adjournment as long as her counsel representing her and prosecuting the proceedings on her behalf and record her cross-examination by videoconference, if not available, the respondent be directed to deposit traveling, boarding and lodging expenses in terms of Order XXV of Code of Civil Procedure and on such deposit the petitioner shall appear before the Court and depose. This direction does not preclude

the Additional Senior Civil Judge, Tenali to pass any order against the petitioner in the event of her counsel failed to represent and prosecute the proceedings, in accordance with law.

With the above direction, the petition is disposed of at the stage of admission. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this petition shall stand closed.

July 12, 2017

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