

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION NO.93 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw F.C.O.P.No.788 of 2015 along with I.A.Nos.765 & 766 of 2016, pending on the file of the Principal Senior Civil Judge, Mancherial, Adilabad District and transfer the same to any other Court at Hyderabad.

The petitioner filed F.C.O.P.No.788 of 2015 under Section 13(1)(i-a) of the Hindu Marriage Act for dissolution of marriage by granting decree of divorce raising several contentions. But, the respondent/wife filed Tr.C.M.P.No.499 of 2015 before this High Court and this Court was pleased to allow the petition, withdrawing F.C.O.P No.788 of 2015 pending on the file of Judge, Family Court, Ranga Reddy and transferred the same to the Senior Civil Judge's Court at Mancherial. But, the order passed by this Court was not communicated to the Court and in the meanwhile, the Judge, Family Court at Miyapur on its transfer consequent upon its establishment passed an *exparte* order, despite the stay subsisting on that date. In the meanwhile, the case was transferred to XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy at Miyapur, Kukatpally, due to establishment of new Court, as the cause of action for the petition arose within the jurisdictional limits of Kukatpally of the Court, passed *exparte* decree, inspite of the interim order.

On coming to know about the exparte decree, a petition was filed for setting aside the exparte order along with the petition to condone delay. But the Court at Kukatpally ceased to have jurisdiction over the matter, in view of the orders passed by this Court in Tr.C.M.P.No.499 of 2015 dated 25.11.2015. Therefore, entire record was sent to the Senior Civil Judge's Court at Mancherial.

The main ground urged before this Court is that the petitioner and respondent are now staying within the jurisdictional limits at Hyderabad and it is difficult for the petitioner/husband to attend the proceedings at the Court at Mancherial and prayed to withdraw and transfer F.C.O.P.No.788 of 2015 from Senior Civil Judge's Court at Mancherial to any other Court within the limits at Hyderabad.

Learned counsel for the petitioner Sri K.V. Siva Prasad by over vehemence, contended that the Court can exercise jurisdiction taking into consideration of the inconvenience being faced by either of the parties and the Court cannot pass casual orders, since it is not a casual petition and the petitioner agreed to bear travelling, lodging and boarding expenses for undertaking journey, stay at Hyderabad by the respondent from any place to the Court, if it is transferred to any Court at Hyderabad.

Whereas, learned counsel for the respondent Sri Bankatlal Mandhani opposed the application on the ground that when the matter was withdrawn and transferred to the Senior Civil Judge's Court at Mancherial, despite the objection raised by the petitioner in the transfer O.P., the matter cannot be withdrawn and

transferred again to any other Court at the convenience of the petitioner and prayed for dismissal of the petition.

Undoubtedly, the petitioner filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act before the Judge, Family Court, Ranga Reddy District in F.C.O.P.No.788 of 2015 for dissolution of marriage between the petitioner and respondent, on the ground of cruelty. Filing of Tr.C.M.P.No.499 of 2015 and allowing the same is also not equally in dispute. At the same time, the XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy at Miyapur, Kukatpally passed an *ex parte* order, despite stay granted by this Court till disposal of the Tr.C.M.P.No.499 of 2015. Therefore, at the instance of the respondent, taking into consideration of her inconvenience to appear before the Court at Ranga Reddy District, this Court passed order withdrawing F.C.O.P.No.788 of 2015 from the file of Judge, Family Court, Ranga Reddy District and transferred the same to Principal Senior Civil Judge's Court at Mancherial. But, now, the contention of the petitioner before this Court is that the respondent is also residing within the jurisdictional limits of Hyderabad Courts and conveniently shown the address of the respondent at Kolthur Village, Shameerpet Mandal, Ranga Reddy in the causetitle of the petition. But, the petitioner did not file any piece of paper to substantiate his contention that the respondent is residing within the jurisdictional limits of Hyderabad/Ranga Reddy District.

On the other hand, in the cause title of F.C.O.P.No.788 of 2015, it was shown that the respondent was residing at

Q.No.S.D-109, R..K. 8 Colony Post, Srirampur Colony, Mancherial, Adialabad District. In the entire petition, the petitioner did not disclose the date when the respondent shifted her residence from Mancherial to Ranga Reddy, except conveniently mentioning the address at Ranga Reddy in the long cause title of the present petition. In the absence of any proof that the respondent is residing within the jurisdictional limits of Ranga Reddy/Hyderabad City, the petition cannot be withdrawn.

The other contention raised by the learned counsel for the petitioner before this Court is that the petitioner is facing inconvenience and expressed his willingness to pay travelling and other incidental expenses like boarding and lodging. In such case, the Court can withdraw the petition and prayed to withdraw and transfer to any other Court within the limits at Hyderabad.

Learned counsel for the petitioner relied on the judgments of the Supreme Court in **Gayatri Mohapatra v. Ashit Kumar Panda¹**, **M. Sivagami v. R. Raja²**, **Kanagalakshmi v. A. Venkatesan³**, **Priyanka Batra v. Manish Batra⁴**, **Kakali Pal v. Balai Chandra Pal⁵**, **Preeti Sharma v. Manjit Sharma⁶**, **Anindita Das v. Srijit Das⁷** and **Kulwinder Kaur alias Kulwinder Gurcharan Singh v. Kandi Friends Educational Trust and ors.⁸**, where the Apex Court constitutionally held that, when the husband agreed to pay travelling and other incidental expenses

¹ (2003) 11 Supreme Court Cases 731
² (2005) 12 Supreme Court Cases 301
³ (2004) 13 Supreme Court Cases 405
⁴ (2005) 12 Supreme Court Cases 236
⁵ (2005) 12 Supreme Court Cases 216
⁶ (2005) 11 Supreme Court Cases 535
⁷ (2006) 9 Supreme Court Cases 197
⁸ AIR 2008 SUPREME COURT 1333

like lodging, boarding etc., to the wife and to the person who accompanied the wife, the Court can withdraw and transfer the matter from one Court to another Court.

The Apex Court in **Kulwinder Kaur**⁸ had an occasion to deal with scope of Section 24 to withdraw and transfer the matters from one Court to the other and held as follows:

“Section 24 of Code of Civil Procedure confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 of Code of Civil Procedure cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

It is further held that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
- (iii) issues raised by the parties;
- (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;
- (v) important questions of law involved or a considerable section of public interested in the litigation;
- (vi) “interest of justice” demanding for transfer of case, etc.

The above guidelines are illustrative, but not substantive guidelines.”

Therefore, the general guidelines laid down by the Apex Court are to be kept in mind while deciding an application for transfer under Section 24 of C.P.C. In the earlier Tr.C.M.P.No.499

of 2015 this Court accepted the contention of the respondent that it is inconvenient to her to attend the Court at Ranga Reddy and transferred the matter to the Senior Civil Judge's Court at Mancherial. Thereafter, there were no substantial changes after passing the order. In the absence of any changed circumstances, the F.C.O.P.No.788 of 2015 along with I.A.Nos.765 & 766 of 2016 before the Principal Senior Civil Judge's Court, Mancherial cannot be withdrawn at the whim and fancy of the petitioner, more particularly, on the ground of inconvenience being faced by him.

In **Krishna Veni Nagam v. Harish Nagam**⁹, 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."

In view of the guidelines issued by the Supreme Court in **Krishna Veni Nagam**⁹ case, the parties can be examined by video

⁹ JT 2017 (3) SC 190

conferencing or in case, the wife is facing any financial problem to attend the Court, the other spouse may be directed to deposit travelling expenses, boarding and lodging expenses and furnish the address particulars and phone number to the District Judge, where within he/she is residing. Therefore, the appearance of the petitioner is not imperative on all dates of adjournments, except on the dates when the petitioner is to be examined as a witness before the Court, in the event no facility of video conference is available. In view of the guidelines laid down by the Apex Court in **Krishna Veni Nagam**⁹ case, the matrimonial matters cannot be withdrawn on the ground of inconvenience. The Apex Court also considered the earlier judgment in **Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.**¹⁰, the Supreme Court observed as follows:

“The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interest of all the parties and for the ends of justice.” The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was prima facie more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.” Though these observations have been made in the context of granting anti suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down

¹⁰ AIR 2003 SC 1177

conditions in the interest of justice subject to which its jurisdiction may be availed.

Though, the learned counsel for the petitioner came forward to pay the travelling and other incidental expenses, that by itself is not a ground to withdraw and transfer the matter. Even otherwise, if the matter is withdrawn and transferred, it amounts to reviewing the order passed by this Court earlier in Tr.C.M.P.No.499 of 2015. Therefore, I find no grounds to exercise jurisdiction under Section 24 of C.P.C to withdraw and transfer F.C.O.P.No.788 of 2015 along with I.A.Nos.765 & 766 of 2016, pending on the file of the Principal Senior Civil Judge, Mancherial, Adilabad District and transfer the same to any other Court at Hyderabad. However, the Senior Civil Judge, Mancherial is directed to follow the guidelines scrupulously issued by Apex Court in **Krishna Veni Nagam⁹** case and decide the matter in accordance with law.

Learned counsel for the respondent brought to the notice of this Court that F.C.O.P.No.788 of 2015 along with I.A.Nos.765 & 766 of 2016 were heard and reserved for orders. If, really, the arguments of both counsel were heard and reserved for orders, question of appearance of the petitioner does not arise immediately, except for trial and trial can be conducted in terms of the guidelines issued by the Apex Court. Therefore, inconvenience of the petitioner to prosecute the proceedings is not a ground to withdraw and transfer the case and the petition is devoid of merits.

In view of my foregoing discussion, I do not find any merits in this case to withdraw F.C.O.P.No.788 of 2015 along with I.A.Nos.765 & 766 of 2016, pending on the file of the Principal

Senior Civil Judge, Mancherial, Adilabad District and transfer the same to any other Court at Hyderabad and the revision is liable to be dismissed.

In the result, the transfer civil miscellaneous petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:13.06.2017
SP

