

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.470 of 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908 (for short, 'CPC') is filed to withdraw F.C.O.P.No.18 of 2017 on the file of Judge, Family Court, Visakhapatnam and transfer the same to the file of Judge, Family Court, Srikakulam on the ground that she is totally depending upon her parents and he has no means to meet expenses to attend the Court in connection with aforesaid F.C.O.P. and she is unable to undertake journey alone without any male assistance.

2. The petitioner is wife of the respondent. The respondent filed the aforesaid F.C.O.P.No.18 of 2017 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, whereas the petitioner filed F.C.M.C.No.26 of 2017 on the file of Judge, Family Court, Srikakulam under Section 125 Cr.P.C. for grant of maintenance and the same is pending. She also filed D.V.C.No.10 of 2017 pending before Excise & Prohibition Court, Srikakulam.

3. The only difficulty expressed by the petitioner to attend the Court in connection with F.C.O.P.No.18 of 2017 is that she is unable to undertake journey without any male assistance and she has no means to travel and she is totally depending upon her parents. The petitioner has to appear before the Court below on every date of adjournment, but if her personal appearance is dispensed with, there will not be any difficulty to prosecute the proceedings. **In Krishna Veni Nagam v.**

Harisha Nagam¹, 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 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.”

Taking into consideration the directions issued by the Apex Court, the witness can be examined by video conferencing in matrimonial cases and in case, no video conferencing facility is available, husband shall be directed to deposit expenses for travelling, lodging and boarding in terms of Order XXV CPC and on such deposit, the petitioner shall appear before the trial Court for recording her cross-examination. Therefore, the difficulty expressed by the petitioner is not sufficient ground to exercise the power under Section 24 CPC to withdraw F.C.O.P.No.18 of 2017 pending on the file of Judge, Family Court, Visakhapatnam. Keeping in mind the difficulty expressed by the petitioner and taking into consideration the facts and circumstances of the case, Judge, Family Court, Visakhapatnam is directed not to insist her appearance on every date of adjournment, as long as, she is being represented by her counsel and prosecuting her case, except on the

¹ AIR 2017 SC 1345

date when her cross-examination is required to be recorded by the Court or on any other day when her personal appearance is required as directed. But, this direction would not preclude the Court below from passing any order, in the event, the counsel, failed to represent and prosecute the proceedings 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 25, 2017
YVL

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 25.07.2017

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