

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.409 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.2389 of 2016 pending on the file of Judge, Additional Family Court, Cyberabad, at Kukatpally, Miyapur, Ranga Reddy District, to try along with F.C.O.P. No.194 of 2017 filed by the petitioner claiming maintenance, pending on the file of Judge, Family Court, Visakhapatnam,.

The main grounds raised by the counsel for the petitioner are that, the petitioner is residing at Visakhapatnam after she was necked out from the house and that she has to take care of her child aged less than one year and it is difficult for her to undertake journey for more than 700 kilometers from Visakhapatnam to the Court, Cyberabad, at Kukatpally, Miyapur, Ranga Reddy District; the petitioner has no means to maintain herself and hence she filed F.C.O.P. No.194 of 2017 before the Judge, Family Court, Visakhapatnam, and that she is facing life threat whenever she attends the court, Cyberabad, at Kukatpally, Miyapur, Ranga Reddy District.

Undisputedly, the petitioner filed F.C.O.P. No.194 of 2017 claiming maintenance under Section 125 of Cr.P.C. and the respondent filed F.C.O.P. No.2389 of 2016 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

The first ground raised by the counsel for the petitioner is that the petitioner facing difficulty to undertake journey for more than 700 kilo meters on each date of adjournment of F.C.O.P. No.2389 of

2016 on the file of the Judge, Additional Family Court, Cyberabad at Kukatpally, Miyapur, Ranga Reddy District.

Earlier it is sufficient ground to withdraw and transfer the matter from one court to another court. But in **Krishna Veni Nagam v. Harish Nagam**¹ the Apex Court, at paragraph 18, held as follows:

“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 Defendants/ 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.”

One of the guidelines is to permit the Court to record evidence of the witness by video conference facility. Therefore, the appearance of the petitioner on every date of adjournment before the Judge, Additional Family Court, Cyberabad at Kukatpally, Miyapur, Ranga Reddy District, is not required, since the petition filed under Section 9 of the Hindu Marriage Act is purely of civil nature, as long as the counsel is representing and prosecuting the case on her behalf. Consequently the contention that she is unable to appear before the Judge, Additional Family Court, Cyberabad, at Kukatpally, Miyapur,

¹ AIR 2017 SC 1345

Ranga Reddy District, on every date of adjournment, is not a ground to withdraw and transfer the matter.

The other difficulty expressed by the counsel for the petitioner that the petitioner is unable to meet travelling and other incidental expenses.

The petitioner admittedly filed F.C.O.P. No.194 of 2017 on the file of Judge, Family Court, Visakhapatnam, under Section 125 of Cr.P.C. contending that she has no means to maintain herself, whereas respondent is allegedly having sufficient means to maintain the petitioner. But no interim order is passed in the O.P. granting interim maintenance. In such contingency, as per guideline No.3, the respondent herein shall deposit costs for travelling, lodging and boarding in terms of Order XXV of CPC. In view of the safeguards as provided by Apex court, the Judge, Additional Family Court, Cyberabad, at Kukatpally, Miyapur, Ranga Reddy District, shall insist the respondent to deposit the expenses for travelling, lodging, boarding and other incidental expenses to undertake journey, to attend the court at Miyapur, whenever her presence is required, so that the petitioner can travel along with the child.

The last ground raised by the counsel for the petitioner is that the petitioner facing life threat in the hands of the respondent. The petitioner did not lodge any complaint against the respondent complaining that she was subjected to life threat by the respondent or even she did not report the same to the Presiding Officer of the Court. Except the bold allegations in the affidavit, no material is produced to substantiate the contention that she is facing life threat.

If for any reason the contention of the petitioner is true, the Officer on receipt of any application from the petitioner may provide

police protection to the petitioner on the dates of adjournments subject to payment of expenditure by either of the parties or in the alternative, and the court may also consider the feasibility of appointment of an Advocate-Commissioner to record the evidence of the petitioner at her place, to avoid such life threat.

The counsel for the petitioner placed reliance on **Bhartiben Ravibhai Rav v. Ravibhai Govindbhai Rav**² wherein the Apex Court ordered the petition for transfer on the ground that the petitioner could not undertake journey covering more than 200 kilometers.

But in view of my observation and following the judgment in **Krishna Veni Nagam v. Harish Nagam** (1supra) when there is possibility of recording evidence by video conference, the presence of the petitioner is not required on all dates of adjournments as observed by me in the earlier paragraphs. Therefore, the Judge, Additional Family Court, Cyberabad at Kukatpally, Miyapur, Ranga Reddy District, is requested not to insist appearance of the petitioner, if there any possibility of her cross-examination by video conference or by appointing of an Advocate-Commissioner, except on the day for any other specific purpose. But this direction would not preclude the Judge, Additional Family Court, to pass appropriate order in accordance with law, in the event, the counsel for the petitioner failed to represent and prosecute the proceedings on behalf of the petitioner.

Therefore, the Judge, Additional Family Court, Cyberabad at Kukatpally, Miyapur, Ranga Reddy District, is requested to adhere the guidelines mentioned above and proceed with the matter in accordance with law.

² 2017(4) SCJ 705

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With the above direction, the transfer civil miscellaneous petition is disposed of. No costs.

Miscellaneous petition, if any, pending in the transfer civil miscellaneous petition shall stand closed.

M.SATYANARAYANA MURTHY, J

29.06.2017
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