

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.441 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure, 1908, requesting to withdraw O.P No.1346 of 2014 on the file of the Judge, Family Court, City Civil Courts, Hyderabad, and transfer the same to the file of the II Additional Judicial First Class Magistrate, Bhimavaram, West Godavari District, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri I.V.N.Raju, learned counsel for the petitioner-wife, and Sri Y.Ramatirtha, learned counsel for the respondent-husband. I have perused the material record.

3. The case of the wife, in brief, is as follows:

"The respondent (husband) filed O.P.No.1346 of 2014 on the file of the Judge, Family Court, City Civil Court, Hyderabad, under Section 26(1) of the Code of Civil Procedure, 1908, and Section 7 of the Family Courts Act for declaration that the judgment and decree of divorce, dated 26.01.2012, granted by the superior Court, Country of Sannta Clara, California, USA, is valid, legal and binding on this petitioner. On 06.09.2009 at about 11 AM, the petitioner lodged a report with the Station House Officer, Palekoderu Police Station, stating that her marriage was performed with the respondent on 09.05.1999 in Rice Millers Association Building, Bhimavaram, and that at the time of marriage, her parents gave Rs.3,00,000/- towards dowry and Ac.4.00 guntas of agricultural land towards pasupu-kunkuma and registered it in her name and sent her for leading conjugal life. For some period, they lead happy marital life without any disputes at Srungavruksham, Pune, Chennai and Hyderabad. Later, the respondent secured job as a Computer Engineer at United States of America. Since then, the respondent and his mother started

harassing the petitioner, both mentally and physically by demanding to get additional dowry of Rs.5,00,000/- and to dispose of the agricultural land of Ac.4.00 guntas as the dowry given at the time of the marriage by her parents was insufficient. At present, the respondent is working at America. The couple was blessed with a child by name Tarun Anjaneya Varma and later, the respondent did not take her back. When the elders visited the house of her mother-in-law at Srungavruksham and requested her to allow the petitioner to stay in the matrimonial home, her mother-in-law demanded to give Rs.5,00,000/- towards additional dowry and dispose of the agricultural land and give that amount, and that otherwise the petitioner will not be allowed to lead conjugal life. When the elders contacted the respondent over telephone and requested to take the petitioner back and lead conjugal life, he replied that he will marry another girl for getting huge amount of dowry and asked them not to call him again at any time. The Station House Officer, Palakoderu Police Station, having received the report of the petitioner, registered a case in Crime No.107 of 2009 for the offence punishable under Section 498-A read with Section 34 IPC and later filed a charge sheet against the respondent and his mother. Since then, the respondent is absconding. The learned II Additional Judicial First Class Magistrate, Bhimavaram, took the case on file as C.C.No.717 of 2010. The respondent did not attend before the said Court. Then, the learned Magistrate issued NBWs against the respondent; but, till today, the NBWs were not executed and are pending since the year 2010. The learned Magistrate split up the case against the respondent and re-numbered the case as C.C.No.463 of 2012 on 17.12.2012 and now, it is pending on the file of the learned II Additional Judicial First Class Magistrate, Bhimavaram. The petitioner filed W.P.No.26648 of 2013 on the file of this Court for execution of the NBWs and the said writ petition is pending. Pending NBWs and trial in C.C.No.463 of 2012, the respondent voluntarily deserted her and filed the above said OP No.1346 of 2014 on the file of the Judge, Family Court, City Civil

Court, Hyderabad, with false and baseless allegations. The petitioner is residing at Narasayya Agraharam, Bhimavaram, West Godavari District, along with her old aged parents. They are suffering from old age ailments and are unable to move freely without assistance. They are unable to accompany her to attend the Court proceedings at Hyderabad. The petitioner is unable to attend the Family Court, Hyderabad, along with her child. The respondent and his mother are residing at Palakoderu. The distance between Bhimavaram and Hyderabad is more than 450 KMs., whereas the distance between Palakoderu and Bhimavaram is 8 KMs. They have to attend the Court of the learned II Additional Judicial First Class Magistrate, Bhimavaram, West Godavari District, in connection with C.C.No.463 of 2012. Hence, the petitioner filed the instant petition seeking transfer of O.P.No.1346 of 2014 filed by the respondent from the Family court, City Civil Court, Hyderabad to the Court of II Additional Judicial First Class Magistrate, Bhimavaram, and for passing such other orders as the Court deemed fit.”

4. The case of the respondent, in brief, is as follows:

All the allegations made in the affidavit of the petitioner are not correct. The Station House Officer, Palakoderu, without proper enquiry and investigation, registered the Crime No.107 of 2009 and filed the charge sheet mechanically though there is no truth in the allegations of the petitioner. The averment that the respondent was absconding is not correct. In fact, he was working in USA; and, he could not attend the Court case as his employer did not grant leave to come to India. After obtaining anticipatory bail from the Court, he has been attending the said Court. He has no knowledge of the writ petition filed by the petitioner. The allegation that the respondent voluntarily deserted the petitioner is false and baseless. At the time of marriage no customary formalities with regard to dowry and other lanchanams took place. He left for USA as he got employment opportunity. Later, the petitioner joined him; and

till 05.10.2006, their family life was smooth. Thereafter, as a result of the adverse behaviour of the petitioner, disputes arose between them. Having returned to India, she never returned back to the marital house at USA and the mediations proved futile. As a counterblast, the petitioner lodged a false complaint on 06.09.2009. The petitioner unnecessarily dragged him and his parents to the Court and still, she has been harassing them without there being any justification. As a result of the false case filed by the petitioner, he lost his job at USA. When he made a proposal for separation by mutual consent, she demanded huge amount; and inspite of several mediations, the said proposal did not materialize. Having no other option and having waited for considerable time of about three years, in the year 2010, he initiated divorce proceedings against the petitioner before the Superior Court of Santha Clara, California, USA, vide Case No.110FLI56347. Having received the summons personally, the petitioner voluntarily failed to attend the said proceedings; and after just and proper adjudication, the said Court granted divorce on 26.01.2012. For getting the said divorce decree declared as valid, the respondent filed the above said OP No.1346 of 2014 on the file of the Additional Family Court, City Civil Court, Hyderabad. In fact, the superior Court at USA has already granted divorce to him from the petitioner and she did not question the said proceedings. However, with an ulterior motive of harassing him, the petitioner has been making efforts and is contesting the above petition. The contrary allegations made in the petitioner's affidavit are not at all correct. The said allegations are invented for the purpose of the present case. Much mediation was under taken for the custody of his son, but the petitioner has not been cooperating for the same. In fact, in spite of his best efforts, the petitioner has not even allowed him to see his son. Keeping the prestige of the families in view, he has been hesitating to take steps in this regard. Due to the adverse behaviour of the petitioner, the health of the respondent has been awfully damaged. There are no grounds much less reasonable ground for transferring the OP 1346 of

2014 as being sought for by the petitioner. The son is studying X standard. The cause mentioned by the petitioner that she is having school going child is not at all reasonable. The petitioner is working as a Financial Assistant in SPKR Engineering College, Bhimavaram, and she is getting nearly Rs.25,000/- per month. The petitioner is having one brother and one sister to look after her old aged parents. The respondent voluntarily undertakes to pay Rs.500/- to the petitioner on each and every day of adjournment she attends the Court at Hyderabad. He is having vocation at USA. Attending the case at Hyderabad is very much convenient for him in view of the travelling system in existence; if the case is transferred the respondent would be put to hardship; but, there may not be any such difficulty for the petitioner if the case is not transferred. The OP can be disposed of speedily within a short period and as such there will not be any difficulty to the petitioner.”

5. The learned counsel for the parties reiterated the respective pleaded contentions of the parties.

6. It is profitable to first refer to the following decisions:

In Gayatri Mohapatra v. Ashit Kumar Panda (2003)11 SCC 731, the Supreme Court noted that the wife is a Director in a Company run by her mother and that she is used to travelling from place to place and observed that her incapacity to travel cannot be permitted to be stated as a ground to seek transfer of the husband's case.

In Teena Chhabra v. Manish Chhabra (2004) 13 SCC 411, the Supreme Court accepted the husband's offer to bear the expenses for the travel, boarding and lodging of the wife and dismissed her transfer petition filed on the ground that she had no source of income to travel.

In M. Svagami v. R. Raja (2005) 12 SCC 301, the Supreme Court disallowed the wife's transfer application by directing the husband to pay her litigation costs and also her expenses and those of her witnesses.

In Kanagalakshmi v. A. Venkatesan (2004) 13 SCC 405, the Supreme Court accepted the plea of the husband that he would bear the expenses, not only of the wife but also of her companion, for travel and stay at the place where the case was pending, and accordingly dismissed the wife's transfer petition. The same principle was reiterated in Priyanka Batra v. Manish

Batra (2005) 12 SCC 236; Kakali Pal v. Balai Chandra Pal (2005) 12 SCC 216; Anuradha Dutta v. Subash Chandra Dutta (2004) 13 SCC 694; Sarita Singh Alias Babli Baghel v. A.P. Baghel (2005) 12 SCC 376; Kamudi Aurora v. Surinder Pal Singh Aurora (2004) 13 SCC 634; and Gargi Konar v. Jagjeet Singh (2005) 11 SCC 446.

In Preeti Sharma v. Manjit Sharma (2005) 11 SCC 535, the Supreme Court observed that merely because the petitioner was a lady it did not mean that she could not travel to another place and that, at the highest, she could be paid expenses for her travel and stay.

In Premlata Singh and Ors. v. Rita Singh (2005) 12 SCC 277, the Supreme Court directed the transfer of the case taking into consideration the fact that the wife was undergoing treatment for kidney failure.

In Usha George v. Koshy George (2000)10SCC95, the Supreme Court held that it was not proper to transfer the case to any other Court as a number of hearings had already taken place in the Court where the case was already pending.

In Neelam Bhatia v. Satbir Singh Bhatia (2004) 13 SCC 436, the Supreme Court taking note of the fact that the case had progressed to the stage of trial disallowed the wife's transfer application, directing the husband to bear the travel and incidental expenses of the wife and her companion.

In Anindita Das v. Srijit Das (2006) 9 SCC 197, the Supreme Court found that leniency to ladies shown by the Court in transfer matters was being often misused and taken advantage of by women. The Supreme Court also observed that each petition is to be considered on its merit. On the facts of that case, the Supreme Court first noted that the grandparents were available to look after the six year old child and then taken note of the husband's offer to bear the expenses for the wife's and her companion's travel, and dismissed the wife's transfer application.

In Eluri Raji Reddy and Ors. v. State of Delhi and Anr. 2004CriLJ2555, the Supreme Court found that as the wife had a house in Andhra Pradesh and her parents were living there it would be proper to transfer the cases filed by her at Delhi to a Court in Andhra Pradesh as sought for by her husband.

In Meenakshi v. Mukesh Kumar (2004) 13 SCC 497, the Supreme Court accepted the statement made by the husband with regard to the safety and security of the wife and that he would bear her conveyance charges and disallowed the wife's transfer application.

In Lalita v. Kulwinder Kumar (2007) 15 SCC 667, the Supreme Court having not accepted the offer of the husband to pay all expenses for his wife's travel, ordered transfer of the husband's case from the Court at Ghaziabad to the Court at Ludhiana by allowing the wife's petition filed on the grounds that she is having school going children, who cannot be left behind alone, and that

she is suffering from certain ailment which required surgery and that she is not in a position to bear litigation and travel expenses.

In the decision in *Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi* (2005) 12 SCC 237, despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition.

In *Sumita Singh v. Kumar Sanjay and Another* (2001) 10 SCC 41, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at.

In *Amandeep Goyal v. Yogesh Pani* (AIR 2016 SC 4843) looking at the peculiar facts more particularly the fact that the husband is taking care of the child who is nine years old and is suffering from malignant disease, the Supreme Court has set aside the order of the High Court and transferred the case from the Court of Additional District Judge, Bathinda, to the Court of the District Judge, Sangur, with liberty to the Judge of the said Court to either hear the case or assign the same to any other Court of competent jurisdiction.

In *Priyanka Parashar v. Jitendra Kumar Thakur* (unreported) (MANU/SCOR/29938/2016) the Supreme Court having noted that there are no grounds dismissed the transfer petition of the wife where by she sought transfer of the FCOP 917 of 2016 from the Family Court, Cyberabad, Ranga Reddy District, Telengana, to Family Court, Patna, Bihar. Thus, it is a case seeking transfer of a OP from a Court in one State to a Court in another State.

In *Sangeeta @ Shreya v. Prasant Vijay Wargiya* (2004) 13 SCC 407, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan.

In the Judgment of the Supreme Court in *Kulwinder Kaur v. Kandi Friends Education Trust* AIR 2008 SC 1333, while dealing with the power of the Court to transfer suits, appeals or other proceedings under Sections 24 and 25 of the Code, the Supreme Court held as under:

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket 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. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”

From a synopsis of the afore-stated Judgments, it is clear that there is no rule of thumb that can be uniformly applied in cases of this nature. Each case would ultimately turn on its own peculiar facts and circumstances and must be dealt with accordingly.

7. In fact, the contentions of the parties are sated supra, in detail. This Court has to now consider the relevant contentions of the parties sans serious allegations traded by the parties as while making an order in a petition of this nature this Court will not enter into the merits of the main matter and record any findings, which will have a bearing on the issues involved in the main matter. After disputes and estrangement between the parties, the respondent/ husband filed O.P.No.1346 of 2014 on the file of the Judge, Family Court, City Civil Court, Hyderabad for a declaration that the judgment and decree of

divorce granted by the Superior Court, country of Santa Clara, California, USA are valid, legal and binding on the respondent. Thereafter, the petitioner/ wife lodged a report with the Station House Officer, Palakoderu Police Station; and C.C.No.463 of 2012 on 17.12.2012 is pending on the file of the learned II Additional Judicial First Class Magistrate, Bhimavaram. Be that as it may.

8. The point for consideration is – ‘whether or not the request of the petitioner/ wife for transfer of husband’s O.P.No.1346 of 2014 from the file of Family Court, City Civil Court, Hyderabad, to the file of the Court of the II Additional Judicial First Class Magistrate, Bhimavaram, or any other competent Court, can be considered duly taking into consideration the grounds raised by the parties in their respective pleadings?’

9. The case of the wife shorn of unnecessary details is as follows: ‘After separation between the spouses, she is staying at Narasayya Agraharam, Bhimavaram, West Godavari District, along with her old aged parents. She is aged about 36 years. She has no sources of income and she is dependant upon her parents. Her parents are suffering from old age ailments and they are unable to move freely without assistance. She is taking care of her minor son now aged 15 years. She has financial weakness, incapacity and inability to undertake travel that too all alone from Bhimavaram, West Godavari District, to the Court at Hyderabad on the date of each and every adjournment of the case. The husband has no difficulties or obligations as those being faced by her.’

10. The case of the husband as stated before this Court sans of unnecessary details is as follows: ‘The son is now grown up and is studying X standard. He is having vocation at USA. Attending the case at Hyderabad is very much convenient for him in view of the travelling system in existence; if the case is transferred the respondent would be put to hardship; but, there may not be any such difficulty for the petitioner if the case is not transferred. The OP can be disposed of speedily within a short period and as such there will not be any

difficulty to the petitioner. The respondent voluntarily undertakes to pay Rs.500/- to the petitioner on each and every day of adjournment she attends the Court at Hyderabad. There are no grounds to allow the request of the petitioner. The petition is filed only to harass the respondent and his family to come to her terms. Hence, the petition may be dismissed.'

11. The wife specifically pleads financial incapacity and physical inability to undertake travel from Bhimavaram to Hyderabad. In the Indian context an earning male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a non-earning female or a house wife. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. The OP filed by the husband is pending since 2014 without any progress because the petitioner stayed abroad for most of the time. At one breath he says that he lost his job at USA and that he returned to India because of the criminal case filed by the wife; at another breath he contends that he has avocation at USA and that attending the case at Hyderabad is very much convenient for him in view of the travelling system in existence. His contention that the wife is working at Bhimavaram is unsubstantiated. Even assuming for a moment that the said contention is true it follows that it would be difficult for her to attend the Court case at Hyderabad by availing leaves frequently and at the same time take care of the boy on the dates of adjournments of the case at Hyderabad. Further, the husband is prosecuting his OP through his GPA and not personally.

12. On the above analysis and on taking into consideration the totality of the circumstances of the case, it is obvious that the inconvenience that would be caused to the wife would outweigh the inconvenience, if any, that may be caused to the husband and that in the instant case the wife's convenience shall prevail and shall be preferred.

13. In the result, the Tr.C.M.P No.441 of 2016 is allowed and O.P No.1346 of 2014 on the file of Family Court, City Civil Courts, Hyderabad, is withdrawn and is transferred to the file of the Court of the III Additional District Judge, Bhimavaram, for trial and disposal in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

04th January, 2017
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