

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

Tr.C.M.P.No.721 OF 2017

ORDER:

Heard both sides.

2. Perused the grounds urged in the transfer petition and also perused the memo said to have been filed by the transfer petitioner before the trial court as respondent in O.P.No.350 of 2015 pending on the file of the Judge, Family Court at Secunderabad.

3. The court is not a mere spectator, much less, mute spectator during trial more particularly from the very wording of Section 165 of the Indian Evidence Act. Under that provision, apart from Section 136 of the Evidence Act, court can always question any witness to put any question as to relevancy and admissibility. It is the duty of the person, on putting a question, to clarify if at all there is any genuine doubt in the mind of the court on relevancy and admissibility, from the very wording of Section 136 of the Evidence Act. Leave it as it is, when divorce case is filed by the husband and during his cross-examination as P.W.1 by the respondent/wife though her counsel what he stated is he is willing to join her and even the court observed what is the objection of the respondent when petitioner wants to take her, that too when she is opposing the very relief of divorce, it cannot be said court is biased to the respondent/wife.

4. Regarding the so-called not permitting beyond the scope of the pleadings for the cross-examination though in the cross-examination it is not confined to the pleadings where the credibility and veracity of the witness testing is in question, but generally cannot travel beyond the scope of the pleadings in adducing the evidence as it is only in relation to the matters in controversy the proof by letting in evidence arises.

5. Having regard to the above, these allegations against the Presiding Officer are untenable. Thereby, the transfer petition is dismissed. Needless to say, the Judge shall within the parameters of law proceed in recording the evidence without keeping this in mind.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

29.11.2017
SS