

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.781 of 2016

ORDER:

This is a husband's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw F.C.O.P.No.1823 of 2014 from the file of the Additional Family Court, City Civil Court, Hyderabad, and transfer the same to any other competent Court in City Civil Courts, Hyderabad, except Family Court of Ranga Reddy District at L.B.Nagar, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri Shakeel Ahmed, the learned counsel appearing for the petitioner-husband and Sri M.A.K.Mukheed, the learned counsel for the respondent-wife. I have perused the material record.

3. The case of the petitioner-husband, shorn of unnecessary details, in brief, is as follows:

The marriage between the spouses was performed on 27.12.2001 at Hyderabad. Out of the lawful wedlock, the respondent/wife gave birth to a female child, Mahin Fatima, on 16.10.2004. The daughter is now aged 11 years and is in the care and custody of the wife. The wife, on the ill-advice of her father, filed a criminal case alleging that the petitioner harassed her for dowry. A case in crime No.346 of 2006 was registered and later C.C.No.103 of 2008 is taken on file by the learned XIII Additional Chief Metropolitan

Magistrate, Hyderabad. Her father, by force and muscle power, obtained Qula divorce from the petitioner outside the police station, Malakpet, Hyderabad. The petitioner subsequently challenged the Qula divorce. The petitioner also filed F.C.A.No.140 of 2013 before this Court with regard to the custody rights of the minor daughter. During the pendency of the cases, the petitioner entered into compromise and remarried the respondent on 28.04.2011 and promised to withdraw the above calendar case. After such remarriage, both parties lived happily for some time and it was against the wishes of the father of the respondent/wife. Her father poisoned the mind of the respondent and instigated her to secure financial support from the petitioner. Hence, the petitioner paid Rs.10,00,000/- to the respondent/wife and purchased some property in the joint names of the parties. He made every effort to keep the respondent-wife happy and satisfied. However, the petitioner was being forced to transfer his father's property in the name of the respondent-wife. He refused to do so. Another Dowry harassment case in C.C.No.155 of 2014 is filed and pending on the file of the Court of the learned XIII Additional Chief Metropolitan Magistrate, Hyderabad. Her father also filed a case under I.T. Act in C.C.No.38 of 2015 before the learned VII Additional Chief Metropolitan Magistrate, Hyderabad. Both the parties entered into a memorandum of matrimonial settlement on 15.06.2015. The said settlement deed shows that the wife agreed to amicably settle the matter and withdraw all the cases. Her father has withdrawn the I.T. case in C.C.No.38 of 2015. Subsequently, the petitioner made attempts for cancellation of Qula divorce. Contrary to the terms of

settlement, the respondent-wife, in F.C.A.No.140 of 2013, has submitted to this Court that though certain compromise deeds have been entered into between the parties, on rethinking and reconsideration, she is unable to reconcile with the clause in the deeds that the custody of her daughter shall be handed over to the petitioner on the daughter reaching the age of 18 years and that therefore, she is withdrawing from the compromise deed. Thus, the wife did not cooperate for amicable settlement of the matter. Now, the subject F.C.O.P.No.1823 of 2014 is coming up for cross-examination of the respondent-wife. The petitioner is working in Saudi Arabia as an Engineer and is attending before the Court on each and every date of adjournment. The presence of the petitioner before the Court at the time of cross-examination of the respondent is essential. However, due to continuous threats being given by the father of the respondent and his associates, the petitioner apprehends life threat. There is every possibility that the father of the respondent may do anything to achieve his goal. Hence, the petitioner is unable to attend before the Additional Family Court, City Civil Court, Hyderabad. On 19.09.2016, when the petitioner attended the Court, the father of the respondent indulged in illegal activities with the help of some persons of old city having muscle power and stopped the petitioner in the Court premises and abused him and threatened him with dire consequences. In fact, the father of the respondent held the hand of the petitioner and said that unless the petitioner pronounces Qula divorce, he and his associates will see the end of the petitioner. The respondent and her father are having political background and are having influence in the

police department. When the threat meted out to the petitioner was reported to the Bench Clerk of the Court, the petitioner was asked to bring the matter to the notice of the superintendent of the Court. The superintendent of the Court advised the petitioner to lodge a report with the police. However, by the time the police reached the spot, the said persons disappeared from the scene. The police suggested to the petitioner to settle the matter amicably as it is a family matter. As the father of the respondent and his men threatened the petitioner to pronounce Qula divorce and are indulging in illegal activities and as the petitioner apprehends danger to his life at the hands of the father of the respondent and his associates, he is unable to appear before the Additional Family Court, City Civil Court, Hyderabad. Therefore, he is constrained to file the present transfer petition.

4. Per contra, the case of the respondent-wife, sans unnecessary details, is this:

The material allegations in the petition of the husband are absolutely false. The same are specifically denied. When the affidavit in lieu of examination of chief of the respondent-wife was filed in the divorce O.P., an advocate commissioner was appointed to record her cross-examination. As the counsel for the petitioner did not conduct the cross-examination of P.W.1 (wife), the commissioner filed his report. Again the Court appointed an advocate commissioner and fixed 19.11.2016 as the date for appearance of the petitioner. The counsel for the petitioner was present on that day and a junior counsel sought time. As the petitioner and his counsel did not come forward to

cross-examine the respondent-wife, the commissioner submitted his report to the Court. Later, the respondent adduced further evidence by filing affidavits of P.Ws.2 and 3. As the petitioner did not cross-examine the said witnesses, the right to cross-examine the said witnesses was forfeited and the matter is posted to 20.12.2016. The petitioner attended the Court at the time of reconciliation and on 14.10.2015 only. The petitioner is dragging on the matter. The present petition is filed with all false allegations and with an intention to drag on the matter. Not even a single incident as alleged by the petitioner had happened. The petitioner is residing in Saudi Arabia. He hails from Hyderabad. The respondent is a Doctor by profession and she is a child specialist. From the date of marriage, the petitioner is harassing the respondent. If really the petitioner was threatened by the respondent, father of the respondent and his associates, he ought to have lodged a complaint at the police out post located in the Court premises. He did not do so. No such incident had taken place on 19.09.2016. The petition is liable to be dismissed.

5. At the hearing, the learned counsel for both the parties reiterated the respective contentions of the parties.

6. The learned counsel for the petitioner/husband, while reiterating the pleaded case of the petitioner and while drawing the attention of this Court to the conduct of the respondent in withdrawing from the compromise which was entered into and reduced into writing by the parties, further produced before the Court, the certified copy of the memo dated 01.12.2016 filed before the Court below, wherein, the

incidents that had happened on 19.09.2016 and 14.10.2016 were averred. He vehemently submitted that since there is life threat to the petitioner at the hands of the father of the respondent and the antisocial elements which are assisting the father of the respondent, the petitioner was not in a position to appear before the Court at the time of cross-examination of P.W.1 and prosecute his defence and that the petitioner apprehends life threat and therefore, the case may be transferred, as sought for, to any other competent Court other than the Family Court, Ranga Reddy District at L.B.Nagar.

7. Per contra, the learned counsel for the respondent/wife, while reiterating the defence of the respondent/wife, would submit as follows: 'The wife is entitled to Qula divorce and when once she expressed her willingness and wish to have Qula divorce, the petitioner cannot deny the said relief to her and that the petitioner is harassing the wife from the beginning and that she is a Doctor by profession and that she is having custody of a minor daughter aged 11 years.' The learned counsel brought to the notice of this Court, the memos filed by the advocate commissioner before the Court below, wherein, the commissioner, on two occasions, noted that the counsel for the petitioner failed to appear before the commissioner for cross-examination of P.W.1 and that on one of the two occasions, the petitioner was present before the commissioner. According to the wife, on the said date, no incident, as alleged by the petitioner, has happened and she being a Doctor by profession, was vexed with the attitude and cruel behaviour of the petitioner and was unwilling to

handover the custody of the minor daughter to the petitioner on the daughter attaining the age of 18 years and therefore, the compromise could not materialise and that she has filed several criminal complaints against the husband unable to bear the ill-treatment meted out to her.

8. After a careful consideration of the pleadings and the submissions, this Court notices that alleging that threats were given to the petitioner by the father of the respondent along with his associates in the Court premises on 19.09.2016 and 14.10.2016, he is seeking transfer of the case of the wife from the Additional Family Court, City Civil Court, Hyderabad to any other competent Court. Admittedly, on 19.09.2016, the petitioner did not lodge any police complaint though he alleges that he orally informed the police about the incident. He did not also file a memo on that day before the Court below. After the alleged incident said to have happened on 19.09.2016, the present transfer petition is filed on 15.11.2016. The memo on which reliance was placed was dated 01.12.2016. Thus, the said memo was filed into Court only after the filing of the present transfer petition. Admittedly, the wife is a Doctor by profession and she is having custody of the minor daughter 11 years. In the matters of this nature, the parties expressing apprehensions regarding life threat are not uncommon. Though the petitioner/husband contends that he apprehends life threat at the hands of the respondent or the father of the respondent, in case he is required to attend the wife's O.P. before the Additional Family Court, City Civil Court, Hyderabad, it is trite to observe that the husband can always complain to the trial Court and such a complaint,

if any, will be considered by the Court on its merit. In the facts and circumstances, it is pertinent to call in aid the decision of the Supreme Court in *Sangeeta @ Shreya Vs. Prasant Vijay Wargiya*¹. In the said decision, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go to 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. Further, in the instant case, the contention of the husband herein regarding the threat at the hands of the father of the respondent, in the considered view of this Court, remains unsubstantiated in the light of the discussion *supra*. The wife's O.P., as rightly pointed out by the learned counsel for the respondent-wife, is pending since the year 2014 without any progress, more particularly in the light of the fact that the petitioner is residing at Saudi Arabia. As rightly pointed out by the learned counsel for the respondent/wife, the petitioner is not seeking transfer of the case from Hyderabad district. He is only seeking transfer of the case from Additional Family Court, City Civil Court, Hyderabad, to any other competent Court within the same unit or in the alternative, to the

¹ (2004) 13 SCC 407

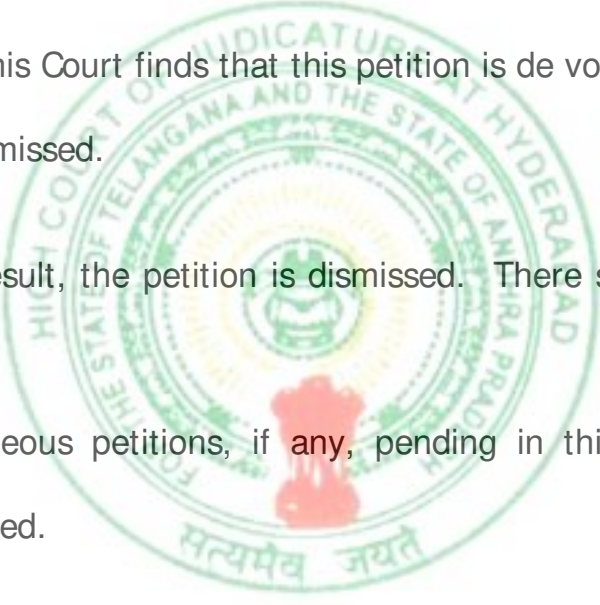
Additional Family Court, Secunderabad, which is also within the same District. The learned counsel for the petitioner is unable to explain as to what difference it would make to the petitioner if the case is transferred from one Court to another Court in the same district.

9. On a careful analysis of the contentions and the submissions made in line with the contentions and after giving detailed and thoughtful consideration to the totality of the circumstances, this Court finds that this petition is only filed to drag on the proceedings in the O.P. filed by the wife, which is now at an advanced stage of trial. Viewed thus, this Court finds that this petition is de void of merit and is liable to be dismissed.

10. In the result, the petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

06th January, 2017.
Bvv


M. Seetharama Murthi, J