

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.52 of 2018

ORDER.

This Petition is filed under Section-24 of the Code of Civil Procedure to withdraw HMOP.No.132 of 2017 pending on the file of the Senior Civil Judge, Guduru, SPSR Nellore District and transfer the same to the Family Court, Tirupati, Chittoor District or to any other competent Court at Tirupati on the grounds that after the disputes between her and the respondent, she has been staying with her parents at Tirupati; that she is the only daughter to her parents; and that as her father passed away, there is no male assistance to accompany her to appear before the Court of Senior Civil Judge at Guduru in connection with the said HMOP.

During the hearing of the case, learned counsel for the petitioner reiterated the said pleadings.

Admittedly, the respondent-husband filed the above HMOP under Section-13(1)(ia) of the Hindu Marriage Act for dissolution of marriage by granting decree of divorce and the same is pending on the file of the Senior Civil Judge, Guduru. The only difficulty expressed by the petitioner to appear before the Senior Civil Judge's Court at Guduru is that she has to travel from Tirupati to Guduru covering a distance of 100 kms on

every date of adjournment. Except this ground, no other ground is urged before this Court even during the arguments. Therefore, I would like to limit my findings only with regard to this aspect.

Admittedly, the petitioner is residing at Tirupati, whereas the said HMOP is pending before the Court at Guduru, where the alleged cause of action for filing the above HMOP arose, and that the said HMOP pending before the Senior Civil Judge, Guduru is required to be decided as per the procedure contemplated under the Code of Civil Procedure. As the said HMOP is purely civil in nature, the petitioner is not required to appear before the Court at Guduru on every date of adjournment unlike the FCOPs.

The petitioner, at best, may be required to appear before the Senior Civil Judge's Court at Gudur for reconciliation and for recording her cross-examination after filing an affidavit in lieu of examination in chief. Attending the Senior Civil Judge's Court at Guduru on one or two occasions, by travelling a distance of 100 kms, is not a difficulty for a woman aged 28 years. Even if she feels any other inconvenience, she may file an application under Order-XXVI Rule-1 read with Order-XVIII Rule-4 C.P.C for appointment of an Advocate- Commissioner to record her cross-examination and on filing such application, the trial Court is directed to consider the same in accordance

with law and pass appropriate order without insisting for the personal appearance on every date of adjournment.

Therefore, as long as the petitioner is represented by the counsel before the Senior Civil Judge, Guduru in the said HMOP, the learned Judge shall not insist for the appearance of the petitioner on every date of adjournment except on the day where her appearance is required for reconciliation proceedings or for any other specific purpose when her personal appearance is directed. In case, the counsel does not represent the petitioner before the Court, the learned Judge is not precluded from passing any order in accordance with law.

Subject to the above directions and observations, the Petition is disposed of.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

06th February 2018

DR