

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION NO.7 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw HMOP.No.87 of 2017, filed under Section 13(I)(ia)(ib) of the Hindu Marriage Act, pending on the file of Senior Civil Judge, West Godavari, Eluru, on the sole ground that the petitioner is residing at Vijayawada, Krishna District but, whereas, O.P. is pending at Eluru, which is at a distance of 75 Kms.

The main ground urged before this Court is that she has to attend her children who are prosecuting B.Tech. and Intermediate; while attending on children, it is difficult for her to appear before the Court undertaking journey covering distance of more than 75 Kms; she totally depends upon her parents, and does not have any financial support to meet the expenses of journey; and, thereby, sought withdrawal of HMOP.No.87 of 2017 pending on the file of Senior Civil Judge, West Godavari, Eluru, and transfer the same to the Judge, Family Court, Vijayawada.

At the stage of admission, learned counsel for the petitioner, Sri M.K.Raj Kumar, while reiterating the allegations made in the petition, mainly contended that, in case, she is required to appear before the Senior Civil Judge, West Godavari, Eluru, she has to face inconvenience; apart from that, she depends on her parents and does not have any means; and it is extremely difficult to attend the O.P. at Eluru on each and every

date of hearing and requested to withdraw and transfer H.M.O.P.No.87 of 2017.

The first and foremost contention raised before this Court is that inconvenience is being caused to the petitioner on account of petition, filed under Section 13(I)(ia)(ib) of the Hindu Marriage Act, before the Senior Civil Judge, West Godavari, Eluru. No doubt, the petitioner, being a lady, may face difficulty to attend the Court at Eluru. But, that alone cannot be a ground to withdraw and transfer and it would suffice if a direction is given to the Senior Civil Judge, West Godavari, Eluru not to insist appearance of petitioner on every date of hearing and appoint Advocate Commissioner for recording her evidence to avoid inconvenience subject to bearing expenses for appointment of Advocate Commissioner by the respondent.

Diverting the jurisdiction is a matter of serious concern and power conferred by Section 24 CPC is purely discretionary. Section 24 CPC enables the Court to withdraw and transfer any case pending on the file of any Subordinate Court under its control to avoid inconvenience being caused to all the parties. Keeping in view the convenience of both the parties, I deem it appropriate to direct the Senior Civil Judge, West Godavari, Eluru, not to insist appearance of the petitioner on each and every date of adjournment in connection with HMOP.No.87 of 2017; and, on application filed by the petitioner for appointment of Advocate Commissioner, under Order XXVI Rule 1 and Order XVIII Rule 4(2) CPC, to record her cross-examination after filing an affidavit, under Order XVIII Rule 4 CPC, the Court may

consider and appoint an Advocate Commissioner to record cross-examination of the petitioner subject to bearing expenses by the respondent. This order will not preclude the Senior Civil Judge from passing any order in accordance with law, in case her counsel did not represent the petitioner.

With the above direction, the Transfer Civil Miscellaneous Petition is dismissed.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

Date:19.01.2018
usd

M. SATYANARAYANA MURTHY, J

