

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.11 OF 2018

ORDER:

This petition, under Section 24 of the Code of Civil Procedure, 1908, is filed to withdraw H.M.O.P.No.201 of 2017, pending on the file of the learned Principal Senior Civil Judge, Machilipatnam, Krishna District and transfer the same to the file of the learned Senior Civil Judge, Bapatla, Guntur District on the ground that the petitioner herein, who was the respondent in H.M.O.P.No.201 of 2017, is only a daily labourer and the respondent deserted the petitioner herein leaving two minor daughters with the petitioner-husband and it is difficult for him to appear before the Court on the dates of adjournment and, therefore, sought for withdrawal and transfer of the H.M.O.P.No.201 of 2017.

The respondent herein filed H.M.O.P.No.201 of 2017, under Section 9 of the Hindu Marriage Act, 1955, (for brevity, 'the Act'), seeking decree for restitution of conjugal rights on various grounds mainly alleging that the petitioner voluntarily deserted her without any ostensible reason. The petitioner herein also filed another H.M.O.P.No.21 of 2016 against the respondent and another-Tapi Balakrishna, under Section 13 (1) (ia) (ib) of

the Act, for dissolution of marriage, and the same is pending before the Court below. Thus, two petitions, i.e., H.M.O.P.No.201 of 2017, filed under Section 9 of the Act for restitution of conjugal rights, is pending before the learned Senior Civil Judge, Machilipatnam and the other H.M.O.P.No.21 of 2016, filed under Section 13 (1) (ia) (ib) of the Act, for dissolution of marriage, is pending on the file of the learned Senior Civil Judge, Bapatla, Guntur District and both the matters have to be tried together to decide the real controversy. However, the ground urged before this Court is that the petitioner herein-respondent in H.M.O.P.No.201 of 2017 and the petitioner in H.M.O.P.No.21 of 2016 is only an agricultural coolie and he has to look after the maintenance of his two minor daughters at Bapatla and, therefore, he is unable to undertake journey from Bapatla to Machilipatnam to appear before the learned Senior Civil Judge, Machilipatnam, whereas, the respondent herein, even according to the petitioner herein, is only a housewife and not attending to any work. In such a case, it is difficult for the respondent herein also to appear before the Court at Bapatla in the event of withdrawal and transfer of the case from Machilipatnam to Bapatla.

The ground urged by the petitioner herein, that he is an agricultural coolie and that he has to take care of his two minor daughters and, therefore, it is difficult for him to attend the Court at Machilipatnam, is not a valid ground since the petitioner is not required to appear before the Court on every date of adjournment. As the matter is purely civil in nature, the learned Senior Civil Judge, Machilipatnam is requested not to insist the appearance of the petitioner herein on every date of adjournment except on the dates whenever his personal appearance is required.

With the above direction, the Tr.C.M.P. is dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

M.SATYANARAYANA MURTHY,J

18th January, 2018.

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