

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.106 OF 2018

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw F.C.O.P. No.2301 of 2017 pending on the file of the Judge, Family Court, at L.B. Nagar, Ranga Reddy District, and transfer the same to the Court of Senior Civil Judge, Razole, East Godavari District.

It is contended by the petitioner that she filed MC No.46 of 2017 on the file of Judicial First Class Magistrate, Razole and also filed HM OP under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Hence she is appearing in MC No.46 of 2017 and in the HM OP pending on the file Judicial Magistrate of First Class, Razole. It is further contended that she is working at Bangalore and her daughter is also prosecuting studies at Bangalore. Therefore it is difficult for her to undertake journey to LB Nagar without any assistance on every date of adjournment and hence requests to withdraw from the Judge, Family Court, L.B. Nagar and transfer the petition to Senior Civil Judge, Rajole.

At the hearing, Sri D.Subba Reddy, learned counsel appearing for the petitioner reiterated the grounds urged in the petition and requested to pass appropriate orders.

The only difficulty expressed by the petitioner is that she is unable to undertake journey alone on every date of adjournment.

Normally, it is a difficult task for a woman to appear before the Court on every date of adjournment undertaking journey from Bangalore to LB Nagar, Ranga Reddy District.

Convenience or inconvenience of the parties is one of the consideration to exercise jurisdiction under Section 24 of CPC. The Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others**¹, laid down the following guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

- (1) **Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;**
- (2) **convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.**
- (3) **Issues raised by the parties.**
- (4) **reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.**
- (5) **important questions of law involved or a considerable section of public interested in the litigation.**
- (6) **interest of justice demanding for transfer of case etc.**

One of the conditions is balance of convenience or inconvenience to the plaintiff or the defendant or the witnesses and the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the points involved in the suit.

The Apex Court in **Santhini v. Vijaya Venketesh**², while overruling a part of the Judgment in **Krishna Veni Nagam v. Harish Nagam**³ held that while deciding a petition filed under Section 24 of CPC, the judgments of any Court under Section 24 CPC are not precedents and each case has to be decided on its own merits.

The trial in the FCOP is governed by the provisions of the Code of Civil Procedure. Therefore, there is no requirement to appear before

¹ 2008 (3) SCC page 659

² (2018) 1 SCC 1

³ (2017) 4 SCC 150

the Court on every date of adjournment except on the date when reconciliation proceedings have been taken up or on the dates when her presence is required for recording her cross-examination by the Court or for any other specific purpose, as long as she is being represented by her counsel and prosecuting the proceedings.

Hence, I find no ground to withdraw and transfer the FC OP. However the Judge, Family Court at LB Nagar, Ranga Reddy District, is directed not to insist the personal appearance of the petitioner on every date of adjournment as long as she is being represented by her counsel, except on the date she required to appear before the Court either in connection with reconciliation proceedings or recording cross-examination or for any other purpose in connection with the above FC OP. This order will not preclude the Court to pass appropriate order, in case her counsel failed to represent her.

With the above direction, the transfer Civil Miscellaneous Petition is disposed of.

Consequently, Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

27.02.2018
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