

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 30 OF 2018

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw O.P.No.1179 of 2017, pending on the file of Special Judge for Additional Family Court, City Civil Court, Hyderabad, and transfer the same to the competent Court at Machilipatnam on the ground that the petitioner lodged report with the police for the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act and after completion of investigation, the police filed charge sheet, which is registered as C.C.No.284 of 2016 before the II Additional Judicial Magistrate of First Class, Machilipatnam and apart from that M.C.No.17 of 2017 is also pending before the Judicial Magistrate of First Class, Special Mobile Court, Machilipatnam.

It is further contended that the petitioner has to take care of the child aged 12 years and thereby it is difficult for her to undertake journey covering 340 kms from Machilipatnam to Hyderabad to appear before the Court on every date of adjournment and that she has no means to meet the expenses. Therefore, prayed to withdraw O.P from the file of Judge, Additional Family Court, City Civil Court, Hyderabad, and transfer the same to the competent Court at Machilipatnam.

The respondent, who is the petitioner in O.P.No.1179 of 2017 filed a petition under Section 13(i)(ia) of the Hindu Marriage Act for dissolution of marriage on various grounds. The petitioner lodged a report against the respondent for the offence punishable under Section

498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, which was registered as Crime No.6 of 2016 and also filed M.C.No.17 of 2017 before the Judicial Magistrate of First Class, Machilipatnam.

Before the Family Court, the petitioner herein being respondent is required to appear on every date of adjournment in terms of provisions contained under the Act.

The petitioner urged two grounds before this Court. The first ground is that the petitioner is unable to undertake journey to appear before the Court at Hyderabad covering distance of 340 kms while taking care of the child and unable to incur expenses. If this Court directs the Judge, Family Court, Hyderabad not to insist her appearance on every date of adjournment except on the dates when her personal appearance is required, the ground of her inability to incur expenses would be served and at the same time, whenever her personal appearance is required, the respondent be directed to pay expenses for traveling and other incidental expenses for the petitioner and also to the person, who accompany her to appear before the Special Judge for Additional Family Court, City Civil Court, Hyderabad in connection with O.P.No.1179 of 2017. The second ground is regarding pendency of two cases at Machilipatnam, filed under Section 125 Cr.P.C. and Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, which have to be tried by the Magistrate and O.P. has to be tried by the Presiding Officer of the Court in the Cadre of District Judge. Since the matter is pending before the Judge, Family Court, which is presided by an Officer in the Cadre of District Judge, hence, it is not a ground to withdraw and transfer O.P.

In view of my foregoing discussion, the Judge, Family Court is directed not to insist for appearance of the petitioner on every date of adjournment as long as she is being represented by any counsel, except on the dates whenever her personal appearance is required for adjudication of the dispute and in case, she is required to appear before the Court in connection with O.P.No.1179 of 2017, the respondent be directed to pay expenses for traveling and other incidental expenses not only to the petitioner, but also to the person who accompany her. This order will not preclude the Judge, Additional Family Court, City Civil Court, Hyderabad from passing any order in accordance with law, in any event, counsel for the petitioner failed to represent the matter before the Court.

With the above direction, the Tr.C.M.P. is disposed of. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 29.01.2018
kvrn

M.SATYANARAYANA MURTHY, J.