

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION NO.36 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed by the petitioner – wife to withdraw HMOP.No.112 of 2017 pending on the file of Principal Senior Civil Judge, Tirupati, filed under Section 13(1)(i-a) of Hindu Marriage Act, 1955 (the Act), to dissolve the marriage by granting a decree of divorce on the ground of cruelty.

Petitioner herein is the respondent in the above O.P. She sought for withdrawal and transfer of HMOP.No.112 of 2017 pending on the file of Principal Senior Civil Judge, Tirupati, to the Court of Family Judge, Nellore on the ground that she filed M.C.No.92 of 2017 under Section 125 Cr.P.C. for grant of maintenance, and also lodged a report with police for the offence punishable under Section 498-A read with 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act which is the subject matter of Crime No.67 of 2017, that she apprehends threat in the hands of her inlaws, as her parents are old aged, it is difficult for her to attend the Court at Tirupati on every date of adjournment and that she has no financial capacity to undertake journey covering nearly 210 K.M. from Nellore to Tirupati.

During hearing at the stage of admission, learned counsel for the petitioner reiterated the above grounds.

Merely because, M.C.No.92 of 2017 is pending before the Judge, Family Court, Nellore, HMOP.No.112 of 2017 cannot be withdrawn and transferred. However, it would suffice, if a direction is given to the Principal Senior Civil Judge, Tirupati not to insist her appearance on every date of adjournment except whenever her personal appearance is required for reconciliation or for any other purpose under the Act, as long as she being represented by her counsel and in case, when she is required to appear before the Court, the respondent be directed to pay traveling and other incidental expenses not only to the petitioner, but also to the person who accompanies her. Consequently, the ground urged before this Court is no more available in view of the above direction.

The other ground urged before this Court is that a report was lodged before the police for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, which is at the stage of investigation. But, mere pendency of investigation is not a ground to withdraw HMOP.No.112 of 2017 pending on the file of Principal Senior Civil Judge, Tirupati.

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**¹, the Supreme Court held as follows:

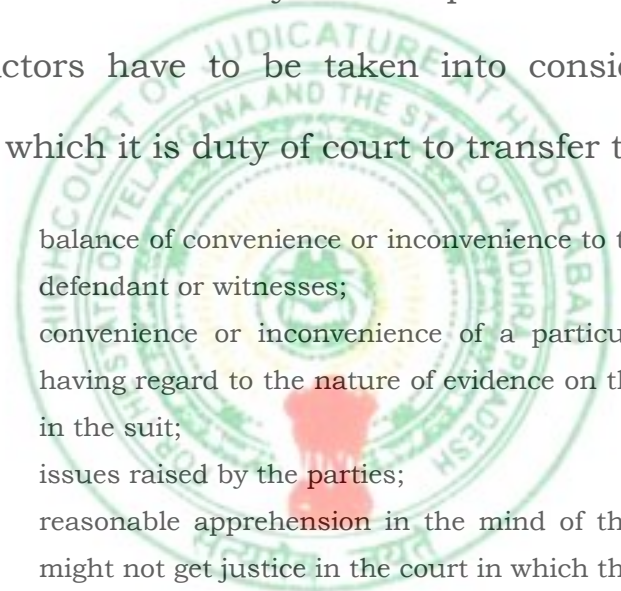
“Section 24 CPC confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the

¹ 2008 (3) Supreme Court Cases Page 659

discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 CPC cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

It is further held by the Supreme Court that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

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- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
 - (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
 - (iii) issues raised by the parties;
 - (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;
 - (v) important questions of law involved or a considerable section of public interested in the litigation;
 - (vi) “interest of justice” demanding for transfer of case, etc.

The Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

In the recent judgment “**Santhini v. Vijaya Venketesh**²” the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taken into consideration and held as follows:

² (2018) 1 SCC 1

“In “Mona Aresh Goel v. Aresh Satya Goel (2000) 9 SCC 255”; the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition.

The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In *Lalita A. Ranga v. Ajay Champalal Ranga* (2000) 9 SCC 355” the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

A two Judge Bench in *Krishna Veni Nagam v. Harish Nagam* (2017) 4 SCC 150, while dealing with transfer petition seeking transfer of a case instituted Under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act') pending on the file of Jnd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction Under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:

“In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen

inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court.”

The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and circumstances of the case advertent to the earlier judgment rendered in “**Ram Gulam Pandit v. Umesh J. Prasad and Rajwinder Kaur v. Balwinder Singh**” (as referred in the judgment), opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

The Apex Court also laid down the following six guidelines.

“(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent.”

As a direction was issued in the earlier paras to the Principal Senior Civil Judge, Tirupati, there is no need to withdraw HMOP.No.112 of 2017 pending on the file of Principal Senior Civil Judge, Tirupati, and transfer the same to the Court of Judge, Family Court, Nellore. Mere pendency of M.C.No.92 of 2017 before the Judge, Family Court, Nellore cannot be a ground for transfer. Hence, I find no ground to withdraw and transfer HMOP.No.112 of 2017 pending on the file of Principal Senior Civil Judge, Tirupati, and transfer the same to the Court of Judge, Family Court, Nellore. However, the Principal Senior Civil Judge, Tirupati, is directed to dispose of HMOP.No.112 of 2017 in accordance with law. But, this order will not preclude the Judge, Family Court, Nellore to pass any order in accordance with law, in the event the counsel for the petitioner failed to represent her in HMOP.No.112 of 2017.

In the result, the Transfer CMP is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date:31.01.2018
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