

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 39 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 H.M.O.P.No.180 of 2017, pending on the file of Senior Civil Judge, Ramachandrapuram, East Godavari District and transfer the same to the Judge, Family Court, Vijayawada as M.C.No.284 of 2016 is pending before the Judge, Family Court-cum-IV Additional District and Sessions Judge, Vijayawada filed by the petitioner under Section 125 Cr.P.C. and she also lodged a report with the police for the offence punishable under Section 498 A IPC, which is at crime stage and investigation is not yet completed.

The petitioner expressed her inability to attend the Court in connection with HMOP undertaking journey from Vijayawada to Ramachandrapuram on every date of adjournment and that she has no means to meet the expenses of traveling and other incidental charges.

During hearing, learned counsel for the petitioner contended that when the petitioner herself filed M.C. as she has no independent source of income to maintain herself, it is difficult for her to meet the traveling and other incidental expenses and apart from that it is difficult for her to undertake journey covering distance of 200 kms. Therefore, prayed for transfer of HMOP.

The first ground urged before this Court is that lack of means to undertake journey and inability to undertake journey covering distance of more than 200 kms. O.P. is purely civil in nature. HMOP is being

tried as per the procedure governed by C.P.C and the rules framed under the Hindu Marriage Act, but not as per the procedure governed by Cr.P.C. and the petitioner is not required to appear before the Court on every date of adjournment as long as her counsel is representing except for reconciliation and for recording her cross examination. The inability to undertake journey covering distance of 200 kms at the age of 23 years is not believable, but the respondent shall pay traveling and other incidental expenses for stay at Ramachandrapuram whenever she attends the Court in connection with O.P.

The other contention is that pendency of M.C. M.C. shall be tried as per the procedure prescribed under Cr.P.C. by the Judicial Magistrate, whereas O.P. shall be tried by the Senior Civil Judge following the rules and procedure, both under the Hindu Marriage Act and C.P.C. Therefore, these two matters are independent. In such a case, withdrawal of HMOP pending on the file of Senior Civil Judge, Ramachandrapuram and transfer to the Senior Civil Judge, Vijayawada would not serve any purpose except causing inconvenience to the respondent. Therefore, I am not inclined to withdraw and transfer HMOP. However, the Senior Civil Judge is directed not to insist appearance of the petitioner on every date of adjournment, except when 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 accompanied her to attend the Court in connection with HMOP No.180 of 2017.

With the above direction, the Tr.C.M.P. is disposed of. There shall be no order as to costs.

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

M.SATYANARAYANA MURTHY, J.

Date 01.02.2018

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