

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.48 of 2018

ORDER.

This Petition is filed under Section-24 of the Code of Civil Procedure to withdraw FCOP.No.268 of 2016 pending on the file of the Additional District Judge-cum-Family Court, Guntur and transfer the same to the Court of Senior Civil Judge, Mulugu and in the alternative, to the Family Court at Warangal, on the ground that the petitioner is not in a position to attend before the Court at Guntur in connection with the above FCOP, as the distance between these two places is more than 350 kms, while taking care of a child aged four years, and that she has no means.

The petitioner stated that she has also filed MC.No.10 of 2016 and DVC.No.10 of 2016 in the Court of the Judicial First Class Magistrate, Mulugu against the respondent and is appearing in the said cases, and in case, the above FCOP is withdrawn from the Court of the Additional District Judge-cum-Family Court, Guntur and transferred to the Court of Senior Civil Judge, Mulugu, no prejudice will be caused to the respondent.

The first and foremost contention urged by the learned counsel for the petitioner is the pendency of two cases, *i.e.*,

MC.No.10 of 2016 and DVC.No.10 of 2016 before the Judicial First Class Magistrate, Mulugu and the respondent appearing before the Court at Mulugu in connection with the above cases.

No doubt, the respondent may appear before the Court at Mulugu in connection with the above two cases, but it is to be noted that the above FCOP pending before the Family Court, which is presided by a Senior officer in the lower judiciary *i.e.*, District Judge, cannot be transferred to a Court presided by the Senior Civil Judge. Even if the said FCOP is withdrawn and transferred as prayed for, it would not serve any purpose except to reduce the journey of the petitioner and apart from that, the said MC and DVC are being tried as per the procedure contemplated under the Code of Criminal Procedure whereas the said FCOP has to be tried as per the procedure contemplated under the Family Courts Act and the Civil Procedure Code.

The second ground urged by the learned counsel for the petitioner is that the petitioner while taking care of a child aged four years is unable to appear before the Court at Guntur on every date of adjournment. In my view, this difficulty can be met by directing the Additional District Judge-cum-Judge, Family court at Guntur not to insist for the appearance of the petitioner on every date of adjournment except on the day when her appearance is required for reconciliation proceedings or on the

day, when she was specially directed to appear before the court, subject to payment of travelling and other incidental expenses like food, shelter, etc., both to the petitioner and the person who accompanies her to attend the Court in connection with the above case as long as the counsel is representing her in the above FCOP. In case, the counsel does not represent the petitioner before the Court, the learned District Judge is not precluded from passing any order in accordance with law. Therefore, in view of the above directions, the distance is not a matter of difficulty. Hence, I find no grounds to allow this Petition.

However, the learned Additional District Judge-cum-Family Court, Guntur, is directed not to insist for the appearance of the petitioner on every date of adjournment except on the day when her appearance is required for reconciliation proceedings or on the day when she was specially directed to appear before the Court, subject to the respondent paying the travelling and other incidental expenses like food, shelter, etc., both to the petitioner and the person who accompanies her to attend the Court in connection with the above FCOP as long as the counsel is representing her in the said case. In case, the counsel does not represent the petitioner in the said FCOP., the learned Additional

District Judge, Guntur, is not precluded from passing any order in accordance with law

Subject to the above directions and observations, the Petition is disposed of.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

05th February 2018

DR

