

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 40 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.OP.No.5 of 2018, pending on the file of Senior Civil Judge, Nirmal, Nirmal District and transfer the same to the Senior Civil Judge, Hanamkonda at Warangal.

HMOP is filed by the respondent under Section 3(1)(i)(ia) of the Hindu Marriage Act for dissolution of marriage. The petitioner is the respondent in HMOP.

This petition is filed on three grounds. The first ground is that the Senior Civil Judge, Nirmal lacks territorial jurisdiction since no cause of action arose within the territorial jurisdiction of Nirmal. The second ground is that the petitioner has to accompany with her child, who is aged one year and thereby it is difficult for her to appear before the Court at Nirmal in connection with HMOP by undertaking journey of more than 300 kms on every date of adjournment and that she is depending upon her parents, who are residing at Hanamkonda, Warangal District.

The first and foremost contention urged before this Court is that the Senior Civil Judge, Nirmal lacks territorial jurisdiction as no part of cause of action arose within the jurisdiction of the Senior Civil Judge, Nirmal, such question cannot be decided at this stage while exercising power under Section 24 C.P.C. and it is left open to the petitioner to file application before the Senior Civil Judge, Nirmal for return of petition

under Order VII Rule 10 and 10(a) C.P.C. If any such application is filed, the Senior Civil Judge, Nirmal is directed to decide the territorial jurisdiction of the Court and pass appropriate orders in accordance with law. The second ground is that the petitioner has to take care of her one year old child and while taking care, it is difficult for her to undertake journey covering more than 300 kms from Hanamkonda to Nirmal on every date of adjournment. The third ground is that the petitioner is totally depending upon her parents having completed her MBBS recently.

HMOP is pending before the Senior Civil Judge, Nirmal filed under Section 13(1)(i)(ia) of the Hindu Marriage Act, not under the Family Courts Act, the petitioner is not required to appear before the Court on every date of adjournment, in view of the procedure being followed by the Court governed by rules framed under the Hindu Marriage Act and C.P.C. except on the day when proceeding for reconciliation or if the petitioner wishes to examine herself before the Court, or otherwise the petitioner can file application under Order XXVI Rule 1 and Order XVIII Rule 4(2) C.P.C. to appoint an advocate commissioner to record her evidence subject to bearing expenses by the respondent/husband, who is practicing doctor since she did not possess any means to maintain herself having completed MBBS recently. If on the day when the petitioner appear before the Court in connection with reconciliation or for any other special purpose as directed by the Court, the Senior Civil Judge, Nirmal is directed to issue necessary direction to the respondent to pay traveling and other incidental expenses not only to the petitioner, but also to the person, who accompanied her whenever she attends the Court. The Senior Civil Judge, Nirmal is directed not to insist the

appearance of the petitioner on every date of adjournment except on the dates when her personal appearance is required, as long as she is being represented by any counsel. This order will not preclude the Senior Civil Judge, Nirmal 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: 01.02.2018
kvrn

M.SATYANARAYANA MURTHY, J.

