

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.55 OF 2018

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of C.P.C to withdraw H.M.O.P.No.1277 of 2017 on the file of Judge, Family Court at Vijayawada and transfer the same to the Court of Judge, City Civil Court, Hyderabad, on the ground that the petitioner/wife is working at Hyderabad and whereas, the respondent/husband is not unemployed. However, the respondent/husband seems to have worked for short spells at different places, including Vijayawada, Visakhapatnam, Hyderabad and presently, he is now leading idle life.

H.M.O.P.No.1277 of 2017 is pending before the Judge, Family Court, Vijayawada and the petitioner has to undertake journey covering distance of more than 267 kms from Hyderabad to Vijayawada and she being a lady, is not in a position to undertake such extensive journey to appear before the Judge, Family Court, Vijayawada on every date of adjournment. Further, the petitioner/wife is facing threat while appearing before the Judge, Family Court, Vijayawada on every date of adjournment.

Heard learned counsel for the petitioner at the stage of admission and the learned counsel reiterated the grounds urged in the petition.

Admittedly, the petitioner/wife is aged 32 years by the date of filing this petition and she is working at Hyderabad. Whereas, the respondent is unemployed and he is leading idle life. The only ground urged is that, the petitioner/wife is unable to undertake journey covering distance of more than 267 kms from Hyderabad to Vijayawada.

If a direction is issued to the Judge, Family Court, Vijayawada not to insist the appearance of this petitioner/wife on every date of adjournment, except on the date of reconciliation proceedings or on the day when the cross-examination of the petitioner/wife is required to be recorded by the Court or for any other specific purpose, as directed by the Judge, Family Court, Vijayawada, the said purpose would be served and the plea of inability of the petitioner/wife to appear before the Judge, Family Court, Vijayawada on every date of adjournment will not be available, if such direction is issued.

The other ground urged by the learned counsel for the petitioner is that, the petitioner/wife is facing threat from the family members of the respondent/husband and the family members are residing within the territorial limits of Judge, Family Court, Vijayawada. But, no specific instances are narrated in the entire petition about facing such life threat and no piece of paper is produced about such threat from the respondent/husband. If, really, the petitioner/wife is facing such threat, she would have lodged a report with the police or complained to the Presiding officer of the Court. But, the petitioner/wife conveniently invented a story of life threat from the respondent and therefore, such ground is baseless.

Hence, I find no ground to withdraw H.M.O.P.No.1277 of 2017 on the file of Judge, Family Court at Vijayawada and transfer the same to the Court of Judge, City Civil Court, Hyderabad.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court and under its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

In the recent judgment “**Santhini v. Vijaya Venketesh**”¹ the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taking in to consideration and held as follows:

“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

¹ (2018) 1 SCC 1

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 the 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 adverting to the earlier judgment rendered in “*Ram Gulam Pandit v. Umesh J. Prasad*” and “*Rajwinder Kaur v.*

Balwinder Singh” (as referred in the judgment) and 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.”

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**², the Supreme Court held as follows:

² 2008 (3) Supreme Court Cases Page 659

“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 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:

- (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 view of the law laid down in the above judgments, I find no ground to exercise discretionary power under Section 24 of C.P.C, in the peculiar facts of the case.

In the result, the petition is disposed of without costs and the Judge, Family Court, Vijayawada is directed as follows:

- (1) not to insist the petitioner's appearance on every date of adjournment in H.M.O.P.No.1277 of 2017, except for reconciliation, recording of cross examination and for any other proceedings whenever directed by the Court and as long as her counsel represents her. In the event the counsel for the petitioner/wife fails to appear and represent the matter, this order will not preclude the Judge, Family Court, Vijayawada from passing any order, in accordance with law.
- (2) Whenever she attends the Court as directed by the Court, the respondent herein shall pay both travelling and other incidental expenses to the petitioner and the companion, who accompanied her to attend the Court at Judge, Family Court, Vijayawada.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.02.2018

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