

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 63 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 OP.No.12 of 2016, pending on the file of Judge, Family Court, Ongole, Prakasam District and transfer the same to the Judge, Family Court, Guntur, Guntur District.

OP is filed by the respondent/husband under Section 3(1)(ia) of the Hindu Marriage Act for dissolution of marriage. The petitioner/wife is the respondent in OP.

The petitioner expressed her inability to attend the Court at Ongole in connection with OP by undertaking journey of more than 110 kms from Guntur to Ongole Prakasam District, on every date of adjournment along with her daughter and that she is depending upon her parents, who are residing at Guntur 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 and her daughter, 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 110 kms. Therefore, prayed for transfer of OP. It is also argued that the petitioner was threatened with dire consequences by the respondent as she did not agree for the divorce by mutual consent and therefore, there is every danger for the life of the petitioner and to her daughter, if the original

petition is being tried before the Court at Ongole. If really, the petitioner was subjected to such threat, nothing prevented her to complain to the presiding officer of the Court or to the police concerned where the alleged threat took place, but she did not lodge any report with the police against the respondent complaining that she was threatened with dire consequences, in case the petitioner did not agree for divorce in a petition filed under Section 13(1)(1a) of the Hindu Marriage Act. Therefore, the alleged threat is not based on any material and on the lame excuse of threat, FCOP cannot be withdrawn and transferred. If for any reason, the petitioner was subjected to such threat at any stage of the proceedings, she is at liberty to lodge complaint to the police, or to the presiding officer of the Court and on receipt of such complaint in writing, either S.H.O. or presiding officer of the Court shall provide necessary protection to the petitioner, whenever she attends the Court in connection with FCOP.

OP is being tried as per the procedure governed by the special rules framed under Family Court Act and the rules framed under the Hindu Marriage Act, but not as per the procedure governed by C.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 or for any other purpose as directed by the Court. The inability to undertake journey covering distance of 110 kms at the age of 29 years is not believable, but

the respondent shall pay traveling and other incidental expenses 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. Therefore, these two matters are independent. In such a case, withdrawal of OP, pending on the file of Judge, Family Court, Ongole and transfer to the Court at Guntur would not serve any purpose except causing inconvenience to the respondent. Therefore, I am not inclined to withdraw and transfer OP. However, the Judge, Family Court, Ongole 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 OP No.12 of 2016. This direction will not preclude the Judge, Family Court, Ongole to pass any order in accordance with law, in the event of failure of her advocate to appear or represent.

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: 08.02.2018
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