

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 69 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.109 of 2017, pending on the file of Senior Civil Judge, Mangalagiri and transfer the same to the Judge, Family Court, Nellore.

OP is filed by the respondent/husband under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The petitioner/wife is the respondent in OP.

The petitioner expressed her inability to attend the Court at Nellore in connection with OP by undertaking journey of more than 300 kms from Nellore to Mangalagiri, Guntur District, on every date of adjournment and that she is depending upon her parents, who are residing at Vijayawada 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 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 300 kms. Therefore, prayed to withdraw and transfer OP.

OP 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 or for any other purpose as directed by the Court. The inability to undertake journey covering distance of 300 kms at the age of 30 years is not available in view of direction, but the respondent shall pay traveling and other incidental expenses whenever she attends the Court in connection with O.P.

In such a case, withdrawal of OP, pending on the file of the Senior Civil Judge, Mangalagiri and transfer to the Court at Nellore would not serve any purpose except causing inconvenience to the respondent. Therefore, I am not inclined to withdraw and transfer OP. However, the Senior Civil Judge, Mangalagiri is directed not to insist personal 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.109 of 2017. The above

direction will not preclude the Senior Civil Judge from passing any order in accordance with law, in the event the counsel for petitioner failed to appear or represent O.P.

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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