

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No.61 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 FCOP.No.1991 of 2017, pending on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to the Senior Civil Judge, Peddapally.

FCOP 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 L.B.Nagar in connection with OP by undertaking journey of more than 200 kms from Peddapally, on every date of adjournment along with minor son and that she is depending upon her parents, who are residing at Peddapally 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 the petitioner has no independent source of income to maintain herself and her minor son, 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 200 kms. Therefore, prayed for transfer of FCOP.

The other ground urged before this Court is that no cause of action arose within the jurisdictional limits of the Judge, Family Court at

Miyapur and when the Court lacks territorial jurisdiction, this Court can exercise jurisdiction and withdraw FCOP. The territorial jurisdiction is a question of fact and that has to be decided only by the Court below by conducting necessary enquiry and on that ground this Court cannot transfer and withdraw FCOP, pending before Miyapur Court. Apart from that, the Judge, Family Court is presided by an officer in the cadre of the District Judge, whereas the Senior Civil Judge is presided by the officer in the lower cadre than the District Judge. Therefore, when O.P is pending before the Court presided by the officer in the cadre of District Judge, the same cannot be transferred.

FCOP 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. The inability to undertake journey covering distance of 200 kms at the age of 29 years is not believable, but the respondent shall pay traveling and other incidental expenses for stay at Hyderabad whenever she attends the Court in connection with O.P. Therefore, I am not inclined to withdraw and transfer OP. However, the Judge, Family Court 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 FCOP.

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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