

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 67 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.54 of 2016, pending on the file of Judge, Family Court, Srikakulam, Srikakulam District and transfer the same to the Judge, Family Court, Vijayawada.

FCOP 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 Srikakulam in connection with OP by undertaking journey of more than 500 kms from Vijayawada to Srikakulam, Srikakular 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 herself filed M.C. as she has no independent source of income to maintain herself, 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 500 kms. Therefore, prayed for transfer of OP.

OP is being tried as per the procedure governed by rules framed under the 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 required to appear before the Court on every date of adjournment, if a direction is given to the Judge, Family Court not to insist her appearance on every date of adjournment except for reconciliation as long as her counsel is representing except for reconciliation and for recording her cross examination. The inability to undertake journey covering distance of 500 kms at the age of 27 years is not available, 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, Srikakulam and transfer to the Court at Vijayawada 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, Srikakulam 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 No.54 of 2016. This order will not preclude the Court below from passing any order in accordance with law in the event of the counsel for petitioner failed to appear and 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.

Date: 08.02.2018
kvrn

M.SATYANARAYANA MURTHY, J.

