

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.76 of 2018

ORDER

This petition under Section 24 of C.P.C., is filed to withdraw HMOP No.54 of 2016 pending on the file of Senior Civil Judge, Srikalahasti and transfer the same to the Court of Senior Civil Judge, Nellore, on the ground that the petitioner filed DVC No.46 of 2016 on the file of Special Judicial Magistrate of First Class for the Trial of Prohibition and Excise Offences, Nellore and M.C.No.23 of 2017 on the file of the Judge, Family Court, Nellore and C.C.No.351 of 2016 is also pending for adjudication at Nellore and that as the respondent-husband filed a divorce petition in H.M.O.P.No.54 of 2016 on the file of Senior Civil Judge, Srikalahasti, and the distance between these two places is about 120 kms., she is not in a position to appear before the Court at Srikalahasti, by undertaking journey on every date of adjournment and that she being a lady, it is difficult for her to attend the Court at Srikalahasti, even if the distance is minimum and requested this Court to withdraw HMOP No.54 of 2016 filed under Section 13(1)(ib) of Hindu Marriage Act, for dissolution of marriage by granting a decree of divorce, and transfer the same to the Court of Senior Civil Judge, Nellore.

2. At the stage of admission, the counsel for petitioner Sri K. Rajasekhar, reiterated the contentions urged in the petition and requested to pass appropriate order withdrawing HMOP No.54 of 2016 pending on the file of Senior Civil Judge, Srikalahasti and transfer the same to the Court of Senior Civil Judge, Nellore.

3. Undoubtedly, the three matters i.e., D.V.C.No.46 of 2016, M.C.No.23 of 2017 and C.C.No.351 of 2016 are pending on the file of the Courts at Nellore, and the procedure for trial of those matters is governed by Cr.P.C., whereas HMOP No.54 of 2016 has to be tried by following the procedure prescribed under Hindu Marriage Act and the provisions of CPC. Therefore, on the ground of pendency of three matters at Nellore, HMOP No.54 of 2016 cannot be withdrawn and transferred.

4. The other ground urged before this Court is that the petitioner is unable to undertake journey to attend the Court at Srikalahasti, which is at a distance of 120 kms., in connection with HMOP No.54 of 2016, which is purely civil in nature and that the appearance of petitioner on the every date of adjournment before the Senior Civil Judge, Srikalahasti, is not imperative, except her appearance on the date of reconciliation proceedings and on the date when her cross-examination is required to be recorded by the Court. Therefore, she is required to appear before the Court on two or three occasions during pendency of HMOP and that to undertake journey covering distance of 120 KMs for the petitioner at the age of 28 years on two or three occasions is not an arduous task. However, the Senior Civil Judge, Srikalahasti, is directed not to insist the personal appearance of petitioner on every date of adjournment, except on the date of reconciliation proceedings or on the date when her personal appearance is required for any other purpose as directed by the Court or on the date of recording her cross-examination before the Court in connection with HMOP No.54 of 2016 as long as she is

being represented by her counsel and whenever the personal appearance of petitioner is required, the respondent be directed to pay travelling and other incidental expenses for her stay, food etc, not only to her but also to the person, who accompanies her, to appear before the Court in connection with the said OP. But this order would not preclude the Senior Civil Judge, Srikalahasti, to pass any order in accordance with law, in the event of failure of her counsel to represent the matter.

5. With the above direction, the Transfer CMP is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this petition shall stand closed.

14th February, 2018

sj



M. SATYANARAYANA MURTHY, J