

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 81 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.989 of 2017, pending on the file of XIV Additional District Judge (Family Court), Vijayawada and transfer the same to the IV Additional District and Sessions Judge, Tanuku.

O.P. is filed by the respondent/husband under Section 13(i)(ia) of the Hindu Marriage Act for dissolution of marriage. The petitioner/wife is the respondent in O.P.

The petitioner expressed her inability to attend the Court at Tanuku in connection with O.P. by undertaking journey from Tanuku to Vijayawada, on every date of adjournment and that she is depending upon her parents, who are residing at Guntur and that she has no means to meet the expenses of travelling and other incidental charges.

During hearing, learned counsel for the petitioner contended that the petitioner 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 from Tanuku to Vijayawada. Therefore, prayed to withdraw and transfer OP. It is also argued that the petitioner was threatened with dire consequences by the respondent and therefore, there is every danger for the life of the petitioner, if the original petition is being tried before the Court at Vijayawada. If really, the petitioner subjected to such danger, nothing prevented her to complain to the presiding officer of the Court or

to the police concerned where the alleged danger took place and apart from that she did not lodge any report with the police against the respondent. Therefore, the alleged danger is not based on any material and on the lame excuse of danger, OP cannot be withdrawn and transferred. If for any reason, the petitioner was subjected to such danger at any stage of the proceedings, she is at liberty to give 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 OP.

OP is being tried as per the procedure governed by special 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 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 at the age of 27 years is not believable, 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 from the Court at Vijayawada and transfer to the Court at Tanuku would not serve any purpose except causing inconvenience to the respondent. Therefore, I am not inclined to withdraw and transfer OP. However, the XIV Additional District Judge, Vijayawada 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 the person who accompanied her to attend the Court in connection with O.P. This direction will not preclude the XIV Additional District Judge, Vijayawada to pass any order in accordance with law in the event of failure of her counsel to appear or represent.

With the above directions, 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: 16.02.2018
kvrn

M.SATYANARAYANA MURTHY, J.

