

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 80 OF 2018

ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed by the petitioner-wife to withdraw F.C.O.P.No. 1787 of 2017 pending on the file of the learned Judge, Family Court, Visakhapatnam (for short, 'the Court at Visakhapatnam'), and transfer the same to Senior Civil Judge's Court, Kandukuru, Prakasam District (for short, 'the Court at Kandukuru'), on the ground that she is an indigent person having no means to meet the expenses for traveling and other incidental expenses and that she cannot undertake journey covering distance of more than 600 kilometers to appear before the Court at Visakhapatnam.

2. At the hearing, learned counsel for the petitioner reiterated the same grounds and placed reliance on the judgment of the Apex Court in ***T.Gayatri Devi Vs. Tallepaneni Sreekanth***¹ to contend that the Court can withdraw the pending O.P. from the Court at Visakhapatnam and transfer the same to the Court at Kandukuru as the petitioner is residing at Kandukuru basing on the convenience of both parties and that when the respondent is residing at a far of place *i.e.* at Hyderabad by attending to his employment, filing of the O.P. at Visakhapatnam is nothing but harassment and prayed for the above relief.

3. The first and foremost ground urged before this Court is that the petitioner is an indigent person, not in a position to appear before the Court at Visakhapatnam on every date of adjournment in connection with the O.P. This ground is not sufficient to withdraw and transfer the O.P. If a direction is given to the Court at Visakhapatnam, not to insist the petitioner's personal appearance on

¹ LAWS (SC) 2013 830

every date of adjournment except on the day when reconciliation proceedings will be taken up as required under the Family Courts Act or on the day when her cross-examination is required to be recorded or on any other day when her personal appearance is required, as directed by the Court subject to payment of traveling and other incidental expenses to the petitioner and to the person who accompanies her to appear before the Court in connection with the O.P., it would suffice to overcome the difficulty of her indigence.

4. The other ground is that it is difficult for the petitioner to travel more than 600 kilometers from Kandukuru to Visakhapatnam where the O.P. is pending but in view of the direction referred above, this is also not a ground as she is not required to appear before the Court at Visakhapatnam except on the date of reconciliation proceedings and even if she is unable to appear before the Court at Visakhapatnam for recording her cross-examination, she may apply for appointment of advocate commissioner and on filing such application, the Court at Visakhapatnam has to consider the same in accordance with law. The other contention of learned counsel for the petitioner is the hardship being caused to the petitioner on account of filing O.P. on the file of the Court at Visakhapatnam but this is also no more a ground in view of the direction issued by this Court in the earlier paras.

5. Learned counsel for the petitioner has relied on ***T.Gayatri Devi*** (1st *supra*), wherein the Apex Court held that hardship of the parties is also one of the considerations and exercised jurisdiction under Section 24 of C.P.C. while withdrawing O.P.No. 1256 of 2011 pending on the file of the learned Judge, Family Court, Hyderabad, and transfer the same to Family Court at Kakinada but in view of the direction referred above, this hardship is also not a ground and in

the recent judgment in ***Santhini v. Vijaya Venketesh***², the Apex Court discussed the law declared in various judgments, where inconvenience of the wife alone is taken in to consideration and held as follows:

“In *Mona Aresh Goel v. Aresh Satya Goel* (2000) 9 SCC 255, the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition.

The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In *Lalita A. Ranga v. Ajay Champalal Ranga* (2000) 9 SCC 355” the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

A two Judge Bench in *Krishna Veni Nagam v. Harish Nagam* (2017) 4 SCC 150, while dealing with transfer petition seeking transfer of a case instituted Under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act') pending on the file of IInd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the

² (2018) 1 SCC 1

process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction Under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:

“In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court.”

The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and circumstances of the case advertent to the earlier judgment rendered in “Ram Gulam Pandit v. Umesh J. Prasad” and “Rajwinder Kaur v. Balwinder Singh” (as referred in the judgment) and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every

occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

The Apex Court also laid down the following six guidelines:

“(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in *Krishna Veni Nagam* (supra) is overruled to the aforesaid extent.”

Therefore, in view of the law declared by the Apex Court, it is left open to the Court, after failure of settlement, to find out the feasibility of Video conference and decide whether it would sub-serve the cause of justice.

6. The other contention of learned counsel for the petitioner is that the motive of the respondent in filing O.P. at Visakhapatnam while working at Hyderabad as Software Engineer. Section 19 of the Hindu Marriage Act, 1955 (for short, 'the Act'), deals with place of suing *i.e.* the Court to which petition shall be presented. Every petition under the Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized, or the respondent at the time of the presentation of

the petition, resides, or the parties to the marriage last resided together, or the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he was alive. Therefore, a petition can be filed at any place specified from (i) to (iv) of Section 19 of the Act. Here, the respondent and the petitioner lastly resided together at Visakhapatnam and filed the O.P. on the file of the Court at Visakhapatnam. Therefore, no motive is attributable to the respondent *prima facie* in filing the O.P. at Visakhapatnam since the cause of action arose at Visakhapatnam. However, territorial jurisdiction cannot be decided in the present petition since the jurisdiction of this Court is limited and the petitioner is at liberty to raise such contention before the Court at Visakhapatnam.

7. In view of my foregoing discussion, the Court at Visakhapatnam is directed as under:

- "1. Not to insist the personal appearance of the petitioner on every date of adjournment in F.C.O.P.No. 1787 of 2017 pending on its file as long as her counsel is appearing and representing the case except on the day when reconciliation proceedings will be taken up or on the day when her cross-examination is required to be recorded or on any other day when her personal appearance is required as directed by it;
2. Whenever the petitioner attends the Court at Visakhapatnam as directed by it or on the date of reconciliation or on the date of recording her cross-examination, the respondent is directed to pay traveling and other incidental expenses to the petitioner and also the companion who accompanies her to attend the Court at Visakhapatnam; and

3. The above directions would not preclude the Court at Visakhapatnam from passing any order in accordance with law, in the event, learned counsel for the petitioner fails to appear and represent the matter."
8. With the above directions, the transfer civil miscellaneous petition is disposed of. Pending miscellaneous petitions, if any, in this petition shall stand closed in consequence.

Date: 15-02-2018.
JSK

M.SATYANARAYANA MURTHY, J.

