

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**  
**TR.CIVIL MISCELLANEOUS PETITION NO.315 OF 2018**

**ORDER:**

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw H.M.O.P.No.65 of 2017 pending on the file of Senior Civil Judge, at Sathupally, Khammam District, which was filed under Section 13(i)(ia) of the Hindu Marriage Act for grant of decree of divorce dissolving marriage of the respondent with the petitioner and transfer the same to the file of Judge, Family Court, Vijayawada, Krishna District.

The petitioner being the respondent in H.M.O.P. sought for withdrawal and transfer of HMOP on the following grounds:

- i) The petitioner is prosecuting her studies i.e. M.Com as day scholar and she has to forego education in the event of appearing before the Court at Sathupally.
- ii) The distance between Sathupally and Vijayawada is 150 kms and she being lady unable to undertake journey covering distance of 150 kms on every date of adjournment.
- iii) The petitioner is apprehending danger to her life to attend the Court in connection with HMOP at Sathupally.
- iv) The respondent is carrying on business under the name and style of JK Enterprises and visiting Vijayawada frequently.
- v) Crime No.135 of 2017 was registered against the respondent for the offence punishable under Section 498-A IPC by Two town Police Station, Vijayawada., which is pending for investigation and the respondent is appearing in connection with the maintenance case at Vijayawada.

Therefore, requested to withdraw and transfer HMO.P.No.65 of 2017 from the file of the Senior Civil Judge, Sathupally to the file of Judge, Family Court, Vijayawada to try along with M.C.No.135 of 2017.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition while contending that the inconvenience being caused to the petitioner in the event of HMOP is not withdrawn and transferred.

The petitioner prosecuting M.Com at Vijayawada and it is difficult for her to undertake journey covering 150 kms. No doubt as a student of

M.Com, days scholar, it is difficult to attend the college and appear before the Court at Sathupally. When the petition filed under Section 13(i)(ia) of the Hindu Marriage Act and pending before the Senior Civil Judge, Sathupally, the petitioner is not required to appear on every date of adjournment like proceedings under Family Courts' Act, except on the dates when reconciliation was taken up or on any other date for recording cross examination before the Court. Even if the petitioner go off to appear before the Court for cross examination, she can file petition for appointment of advocate commissioner to record cross examination subject to permissibility under law. Appearance on one or two days i.e. on reconciliation or on the date of cross examination, the inconvenience expressed by the petitioner is not a ground to exercise power under Section 24 CPC to withdraw and transfer HMOP.

The second ground urged before this Court by the petitioner is that she is unable to undertake journey covering distance of 150 kms from Vijayawada to Sathupally. As discussed above, when the petitioner is not required to appear on every date of adjournment and that the petitioner aged 23 years, it is not difficult task to attend the Court on one or two occasions. Therefore, on this ground HMOP cannot be withdrawn and transferred.

The third ground raised before this Court is that the petitioner is apprehending danger to her life whenever she attends the Court at Sathupally. This contention is not substantiated by any material and even she did not disclose as to when she received threat to her life from the respondent or from his men. If the petitioner was subjected to such threat, when she attended the Court in connection with O.P., she would have lodged report with the police concerned or complain to the Judge, Family Court. But no such complaint was lodged having prosecuted O.P. for a period of one year. If really, the petitioner is facing threat, necessary police protection can be provided whenever she attends the Court in connection with O.P. Therefore, the personal appearance of the petitioner on the dates of adjournments except on the date of reconciliation and to record her cross examination, is dispensed with as long as she being represented by counsel, this will not preclude the Court from passing any order in accordance with law. Therefore, on this ground HMOP cannot be withdrawn and transferred.

The fourth ground is that the husband of the petitioner visiting Vijayawada being businessman at least twice in a week and similarly the

fifth ground is that the respondent is appearing before the Judge, Family Court at Vijayawada would not form basis to exercise power under Section 24 CPC, when the petitioner is not required to appear before the Court on every day of adjournment.

No doubt, inconvenience of the wife is one of the consideration, but if the pending case is transferred from one Court to other, the respondent is bound to suffer the same inconvenience being businessman and apart from that, exercise of power in casual manner would amount to create jurisdiction of the Court where wife is residing or working. Therefore, there are no grounds to withdraw and transfer HMOP and consequently, the transfer civil miscellaneous petition is liable to be dismissed.

Accordingly, the Transfer Civil Miscellaneous Petition is dismissed.  
No costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

26.10.2018

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**M. SATYANARAYANA MURTHY, J**

