

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 101 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 O.P.No. 6 of 2018 pending on the file of the Court of Senior Civil Judge, Jangoan, Jangoan District (for short, 'the Court at Jangoan'), filed by the respondent-husband and transfer the same to Family Court at Nizamabad (for short, 'the Court at Nizamabad').

2. The respondent filed O.P.No. 6 of 2018 on the file of the Court at Jangoan under Sections 13 (1) (ia) and (ib) of Hindu Marriage Act, 1955 (for short, 'the Act'), for dissolution of marriage by granting decree of divorce and it is pending for adjudication. The petitioner sought for withdrawal and transfer on three grounds, namely; (1) she is residing at Nizamabad and it is difficult for her to appear before the Court at Jangoan as the distance is more than 500 kilometers between Nizamabad and Jangoan and there is no direct connectivity between these two places; (2) she lodged a report with the police and after investigation, the police filed charge sheet for the offence punishable under Section 498-A I.P.C. against the respondent and his family members which is pending on the file of the Court of Additional Judicial I Class Magistrate at Nizamabad and the respondent along with his family members has been attending in the above case on every date of adjournment; and (3) the petitioner suffered an injury to her back in childhood and she is unable to undertake long journeys and therefore it is difficult for her to appear before the Court at Jangoan in connection with the above O.P.

3. At the stage of admission, learned counsel for the petitioner has reiterated the grounds raised in the petition and requested this Court to withdraw and

transfer O.P.No. 6 of 2018 on the file of the Court at Jangoan and transfer the same to the Court at Nizamabad.

4. In view of the specific grounds urged before this Court, I would like to deal with each of the grounds in detail. The first ground is that there is no direct connectivity between Nizamabad and Jangoan and she has to travel via Hyderabad to go to Jangoan. Admittedly, the O.P. is pending before the Court at Jangoan. The trial procedure of the petition is governed by C.P.C. and the Rules framed under the Act and she is not required to appear before the Court on every date of adjournment unlike the proceedings under the Family Courts Act, where the trial procedure is governed by the Rules framed under the Family Courts Act. Therefore, question of her appearance on every date of adjournment before the Court at Jangoan in connection with the above O.P. is myth and as long as her counsel represents her in the above O.P., she is not required to appear before the Court except on the day when reconciliation proceedings take place or on the day when her cross-examination is required to be recorded if she wishes to examine herself as a witness. Therefore, the distance is not a matter in view of the nature of the proceedings and if, for any reason, she is required to appear before the Court at Jangoan either on the date of reconciliation or on the date of recording her cross-examination or on any other day as directed by the Court, the Court at Jangoan is requested to direct the respondent to pay expenses for traveling and other incidental expenses like stay, food *etc.*, not only to the petitioner but also to the person who accompanies her to attend the Court in connection with the above O.P.

5. The second ground urged before this Court is that C.C.No. 359 of 2018 is pending for the offence punishable under Section 498-A I.P.C. and it appears from the charge sheet placed on record that the petitioner lodged report with the

police on 08-06-2017 whereas the O.P. was filed on 17-01-2018. In any view of the matter, pendency of criminal case and appearance of the respondent in the said case is not a ground, since, both matters cannot be tried together. Therefore, pendency of criminal case is not a ground to withdraw and transfer, O.P.No. 6 of 2018 on the file of the Court at Jangoan to the Court at Nizamabad.

6. The third ground is that she is suffering from backache due to the injury she sustained during her childhood. If really she sustained such a grievous injury, it is difficult for her to undertake journey covering the distance of 500 kilometers but she is not required to appear before the Court except on the occasions mentioned hereinabove. Even for recording her cross-examination, the petitioner can apply for appointment of advocate commissioner and therefore the difficulty expressed by the petitioner will not be available to her. If any such application is filed, the Court at Jangoan is requested to pass appropriate orders in accordance with law considering the difficulty expressed by the petitioner to appear before the Court.

7. In view of my foregoing discussion, I deem it appropriate to direct the Court at Jangoan as under:

- (1) The Court at Jangoan is directed not to insist the petitioner's appearance on every date of adjournment as long as her counsel is appearing and representing the case except on the day when reconciliation proceedings take place or on the day when her cross-examination is required to be recorded if she wishes to examine herself as a witness or on any other day when her presence is required subject to payment of expenses for traveling and other incidental expenses not only to the petitioner but also to the person who accompanies her;

- (2) The Court at Jangoan is also directed to consider the request for appointment of advocate commissioner if any application is filed subject to producing satisfactory evidence to substantiate her contention that she sustained injury; and
- (3) This order however will not preclude the Court at Jangoan from passing any order in accordance with law in the event of her counsel's failure to appear and represent the mater.

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: 23-02-2018.
JSK

M.SATYANARAYANA MURTHY, J.

