

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.104 OF 2018

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw H.M.O.P. No.189 of 2017 pending on the file of Senior Civil Judge, Machilipatnam, and transfer the same to the Principal Senior Civil Judge, Kovvur.

It is contended by the petitioner that she is residing at her parents house along with her two years' old baby, totally depending upon her parents, having no means to maintain herself and therefore it is difficult for her to undertake journey covering distance of 100 kilometers between Machilipatnam and Kovvur, on every date of adjournment, hence requests to withdraw and transfer the petition to Senior Civil Judge, Kovvur.

At the hearing, Ms.D.Sherley, learned counsel representing Sri Mangena Sree Rama Rao, learned counsel appearing for the petitioner reiterated the grounds urged in the petition and requested to pass appropriate orders.

The H.M.O.P. was filed by the respondent herein for restitution of conjugal rights alleging that the petitioner deserted him without reasonable cause or excuse.

The only difficulty expressed by the petitioner is that she is unable to undertake journey covering distance of 100 kilometers between the Court of Senior Civil Judge, Machilipatnam and the Court of Principal Senior Civil Judge, Kovvur, incurring huge expenditure.

Normally, it is a difficult task for a woman to appear before the Court on every date of adjournment undertaking journey for more than 100 kilometers.

Convenience or inconvenience of the parties is one of the consideration to exercise jurisdiction under Section 24 of CPC. The Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others**¹, laid down the following guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

- (1) **Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;**
- (2) **convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.**
- (3) **Issues raised by the parties.**
- (4) **reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.**
- (5) **important questions of law involved or a considerable section of public interested in the litigation.**
- (6) **interest of justice demanding for transfer of case etc.**

One of the condition is balance of convenience or inconvenience to the plaintiff or the defendant or the witnesses and the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the points involved in the suit.

The Apex Court in **Santhini v. Vijaya Venketesh**², while overruling a part of the Judgment in **Krishna Veni Nagam v. Harish Nagam**³ held that while deciding a petition filed under Section 24 of

¹ 2008 (3) SCC page 659

² (2018) 1 SCC 1

³ (2017) 4 SCC 150

CPC, the judgments of any Court under Section 24 CPC are not precedents and each case has to be decided on its own merits.

The trial in the HMOP is governed by the provisions of the Code of Civil Procedure. Therefore, there is no requirement to appear before the Court on every date of adjournment except on the date when reconciliation proceedings have been taken up or on any date when her personal appearance is required for recording her cross-examination by the Court or for any other specific purpose, as long as she is being represented by her counsel and prosecuting the proceedings.

Hence, I find no ground to withdraw and transfer the HM OP. However the Senior Civil Judge, Machilipatnam, is directed not to insist the personal appearance of the petitioner on every date of adjournment as long as she is being represented by her counsel and whenever she required to appear before the Court either in connection with reconciliation proceedings or recording cross-examination or for any other purpose in connection with the above HM OP. The respondent shall be directed to deposit the expenses for traveling inclusive of boarding and lodging in terms of order XXV CPC not only for the petitioner but also to the person who accompanies her. This order will not preclude the Court to pass appropriate order, in the event her counsel failed to represent her.

With the above direction, the transfer Civil Miscellaneous Petition is disposed of.

Consequently, Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

27.02.2018
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