

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.144 OF 2018

ORDER:

This transfer civil miscellaneous petition is filed, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), to withdraw O.P. No.240 of 2017 pending before the Judge, Family Court, Khammam, and transfer the same to the Family Court, Eluru, West Godavari District, Andhra Pradesh, on three grounds.

The first ground is that she is not in a position to undertake journey covering distance of 170 kilometers from Eluru to Khammam to appear before the Court in connection with F.C.O.P. No.240 of 2017, while taking care of the child aged 4 years.

The second ground is that she filed DVC No.2 of 2018 and it is pending before the Judicial Magistrate of I Class, (Special Mobile Court) West Godavari District, Eluru, the respondent is appearing in the above cases and it would not cause inconvenience to the respondent, if the FCOP is transferred.

The third ground is that the petitioner facing threat from the respondent whenever she attends the court in connection with the FCOP at Khammam.

The difficulty expressed by the petitioner is that she is unable to undertake journey covering distance of 170 kilometers from Eluru to Khammam to appear before the Judge, Family Court at Khammam, while looking after the child aged 4 years. No doubt it is difficult to a woman to undertake journey covering distance of 170 kilometers on every date of adjournment to appear before the Court. But that by itself is not a ground to withdraw and transfer the F.C.O.P. and if a direction is issued to the Judge, Family Court, Khammam, not to

insist the appearance except on the date of reconciliation or recording her cross-examination, it would serve the purpose and the ground of inability to undertake is no more available.

The second ground is that the DVC is pending before the Judicial Magistrate of I Class, Special Mobile Court, Eluru, West Godavari. The proceedings in the DVC before the Magistrate are governed by the Cr.P.C. Here personal appearance of the respondent and the petitioner is not required. The same has to be tried by the JFCM not by the Judge, Family Court. Even if the FCOP is withdrawn and transferred to the Family Court, West Godavari, Eluru, it would not alter the position of the parties and thereby it is not a ground to withdraw and transfer the FCOP.

The third ground is that she is facing life threat whenever she attends before the Judge, Family Court at Khammam, in connection with the FCOP. But this fact is not substantiated by any material and no complaint was lodged with the police or presiding officer of the Family Court.

However, if really she is facing any life threat, she is at liberty to lodge a complaint with the police or the presiding officer of the Court and on receipt of the complaint, the Judge, Family Court is requested to provide necessary protection to the petitioner whenever she attends the court in connection with the FCOP, subject to bearing expenses.

In view of my foregoing discussion, none of the grounds urged in the petition are sufficient to exercise jurisdiction under Section 24 of CPC to withdraw and transfer the FCOP. In any view of the matter, inconvenience of wife alone is not a ground in view of Full Bench Judgment of the Apex Court in **Santhini v. Vijaya Venketesh**¹.

¹ (2018) 1 SCC 1

Hence, the transfer civil miscellaneous petition is disposed of directing the Judge, Family Court, Khammam, not to insist the personal appearance of the petitioner on every date of adjournment as long as she is being represented by her counsel, except on the date she required to appear before the Court either in connection with reconciliation proceedings or recording her cross-examination or for any other purpose in connection with the above FC OP., and on receipt of any complaint, the Judge, Family Court, Khammam, is requested to provide necessary protection to the petitioner whenever she attends the court in connection with the FCOP, subject to bearing expenses.

Consequently, miscellaneous petition, if any, pending shall stand closed.

13.03.2018
BV

M.SATYANARAYANA MURTHY, J

