

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOS.6015 & 5319 OF 2017

COMMON ORDER:

C.R.P. No.5319 of 2017 is filed, aggrieved by the order passed in O.P.No.892 of 2014 dated 12.09.2017 on the file of the Judge, Family Court, Hyderabad, whereas, C.R.P.No.6015 of 2017 is filed aggrieved by the docket order passed in O.P.No.1557 of 2013.

These two revision petitions are filed seeking permission to record evidence of the petitioner by video conferencing, as the petitioner is staying in United States of America and not possible for her to appear before the Court on the dates of adjournment, by incurring huge expenditure. The Court below declined to record evidence by video conferencing or any other mode and passed the impugned orders under challenge.

In **Krishna Veni Nagam v. Harish Nagam**¹, the Supreme Court in paragraph 18 of the judgment laid down certain guidelines in the matrimonial cases for withdrawal and transfer, which are as follows:

“18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

i) Availability of video conferencing facility.

- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”

In the above judgment, the Apex Court directed all the Courts to record evidence by video conferencing, subject to availability.

In the recent judgment “**Santhini v. Vijaya Venketesh**²” the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taking 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.

² (2018) 1 SCC 1

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 IIInd 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 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 adverting 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 v. Harish Nagam [JT 2017 (3) 190] is overruled to the aforesaid extent.”

Further, in **Santhini v. Vijaya Venketesh** (referred supra), the Supreme Court, overruled the judgment of **Krishna Veni Nagam v. Harish Nagam** (referred supra), to some extent for recording compromise by video conferencing, but specified different stages of the proceedings for recording such evidence by video conference, as stated above.

However, learned counsel for the petitioner reported that the petitioner is coming down to India on 25.03.2018 and the petitions were adjourned to 26.03.2018 and she is ready to give evidence before the Court below and that, she will remain in India for another 21 days commencing from 25.03.2018.

In view of the specific statement made by the learned counsel for the petitioner, the Judge, Family Court at Hyderabad is directed to complete recording of the petitioner's evidence within the period of her stay in India, as O.P.No.1557 of 2013 is required to be decided, as expeditiously as possible.

With the above direction, both the civil revision petitions are disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.03.2018

Note: copy by 13.03.2018
b/o
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