

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR.CIVIL MISCELLANEOUS PETITION NO.43 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw O.P.No.2068 of 2016 pending on the file of the Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to the file of Senior Civil Judge, Sathupalli, Khamman District.

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

- i) The petitioner being lady unable to undertake journey on every date of adjournment from Sathupally to Hyderabad.
- ii) The petitioner is apprehending danger to her life to attend the Court in connection with OP at L.B.Nagar, Hyderabad.
- iii) The petitioner filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and maintenance case at Sathupally.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition.

When the petition filed under Section 13(i)(ia) and (ib) of the Hindu Marriage Act and pending before the Judge, Family Court, at L.B.Nagar, Ranga Reddy District, the petitioner is not required to appear on every date of adjournment, if personal appearance is dispensed with before the Family Courts' Act, except on the dates when reconciliation was taken up or on any other date for recording cross examination before the Court it would serve purpose. Appearance on one or two days i.e. on the date of 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 OP.

As discussed above, when the petitioner's appearance is dispensed with on every date of adjournment except on the dates referred above and that the petitioner aged 38 years, it is not difficult task to attend the Court on one or two occasions. Therefore, on this ground OP cannot be withdrawn and transferred.

The ground raised before this Court is that the petitioner is apprehending danger to her life whenever she attends the Court at

L.B.Nagar Court. 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. But no such complaint was lodged having prosecuted O.P. for a period of two years. 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 is being represented by counsel, this will not preclude the Court from passing any order in accordance with law. Therefore, on this ground OP cannot be withdrawn and transferred.

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 and apart from that, exercise of power in casual manner would amount to create jurisdiction of the Court where wife is residing or working. In view of the law laid down in **Ruchi Ram Khattar v. Sarah Narsain Shah**¹ convenience or inconvenience of any of the parties alone is not a ground and the Court has to weigh the inconvenience caused to both parties. Therefore, there are no grounds to withdraw and transfer OP.

The respondent being husband, he is bound to pay travelling and other incidental expenses as ordered by the Court to the petitioner and also to the person who accompanied her. The Judge, Family Court is requested to issue necessary directions to the respondent/petitioner to pay travelling and other incidental expenses like stay, food etc. not only to the petitioner, but also to the person, who accompanied her, whenever she attends the Court in connection with O.P.

With the above observation, the Transfer Civil Miscellaneous Petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

13.11.2018
kvrm

¹ AIR 1928 Lah 159