

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.403 OF 2016

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw O.P. No.394 of 2016 pending on the file of XIV Additional Family Court, Vijayawada, Krishna District and transfer the same to any of the competent court at Tirupathi, Chittoor District.

It is contended by the petitioner that she is residing at her parents house, totally depending upon her parents, having no means to maintain herself and therefore it is difficult for her to undertake journey covering distance of 300 kilometers between Tirupathi and Vijayawada, on every date of adjournment. It is also contended that she received threats from the respondent and though submitted an application for providing police protection to appear before the court, no protection is provided.

The respondent filed counter denying material allegations *inter alia* contended that the threat alleged in the petition is false and even before receiving notice in the O.P., she lodged a complaint with the police dated 08.06.2016. Thus she lodged the complaint with a view to get O.P. pending on the file of the Judge, XIV Family Court, Vijayawada, Krishna District, transferred and the other contention that she has no male assistance etc., are denied and prayed to dismiss the petition. The respondents filed a petition under Section 12(1) (a) & (c) of the Hindu Marriage Act to declare that the marriage as null and void on various grounds.

Coming to the grounds urged in the petition, the first ground is that she is unable to undertake journey covering distance of 300

kilometers between Tirupathi to Vijayawada being a lady and she has no means to incur expenses for traveling, boarding etc.

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.

Therefore, the above ground is no more available to the petitioner to withdraw O.P. No.394 of 2016 on the file of XIV Additional Family Court, Vijayawada, Krishna District, to any competent court at Tirupathi, Chittoor District.

The other ground is that she was subjected to life threat by the respondent and insisted her to remain *ex parte* enabling the respondent to obtain a decree for nullity of marriage.

A specific allegation is made at paragraph 6 in the grounds of the petition as follows:

“...that the petitioner, on receiving the summons from the XIV Additional Family Court, at Vijayawada, Krishna District, has to appear before the court on 28.06.2016. The respondent has issued threats of dire consequences of life to the petitioner. The respondent has stated to petitioner to set herself ex parte, so that he can get relief sought before the court early with speedy disposal.”

The complaint lodged with the police by registered post discloses otherwise and even before receiving the notice in the O.P., the petitioner allegedly contacted the respondent by phone, he threatened the petitioner.

No piece of evidence is brought on record and no crime was registered as on today based on such representation. However, if she really faced such threat in the hands of the respondent, she can complain the same before the presiding officer of the Court or lodge a report with the police against the respondent in writing.

In the event of such complaint, the presiding officer of the Court or lodging report to the police concerned is directed to provide necessary protection to the petitioner whenever she appears before the Judge, XIV Family Court, Vijayawada, Krishna District, in connection with the above O.P., subject to meeting necessary expenses.

This direction is suffice to wipe out the apprehension in the mind of the petitioner to appear before the Judge, XIV Family Court, Vijayawada, Krishna District, in connection with the above O.P.

The Apex Court in **Santhini v. Vijaya Venketesh**¹, while overruling a part of the Judgment in **Krishna Veni Nagam v. Harish Nagam**² held that while deciding a petition filed under Section 24 of CPC, the judgments of any Court under Section 24 CPC are not precedents and each case has to be decided on its own merits.

In view of the law declared by the Apex Court, I find no ground to withdraw and transfer the above O.P. However the Judge, XIV Family Court, Vijayawada, Krishna District, 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 O.P. The respondent

¹ (2018) 1 SCC 1

² (2017) 4 SCC 150

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.

28.02.2018
BV

M.SATYANARAYANA MURTHY, J

