

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TR.CIVIL MISCELLANEOUS PETITION NO.250 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw O.P.No.1650 of 2016 pending on the file of the Judge, Family Court-cum-XVI Additional District Judge, Malkajgiri, Ranga Reddy District, which was filed under Section 13(i)(ia) of the Hindu Marriage Act for grant of decree of divorce dissolving marriage of the respondent with the petitioner and transfer the same to the file of Senior Civil Judge, Avanigadda, Krishna District.

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

- i) The distance between Kuchipudi and Malkajgiri, Secunderabad is 350 kms and she being lady unable to undertake journey covering distance of 350 kms on every date of adjournment.
- ii) The petitioner is apprehending danger to her life to attend the Court in connection with OP at Secunderabad.
- iii) Crime No.151 of 2016 was registered against the respondent for the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act by Kuchipudi Police Station, which is pending for investigation and the petitioner also filed maintenance case i.e. O.S.No.102 of 2016 before Senior Civil Judge, Avanigadda and HMOP No.55 of 2016 before the Senior Civil Judge, Avanigadda.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition while contending that the inconvenience being caused to the petitioner in the event of OP is not withdrawn and transferred.

When the petition filed under Section 13(i)(ia) of the Hindu Marriage Act and pending before the Judge, Family Court-cum-XVI Additional District Judge, Malkajgiri, Ranga Reddy District, the petitioner is not required to appear on every date of adjournment. If the Judge, Family Court is directed not to insist for her personal appearance on every date of

adjournment except for reconciliation or for recording cross examination. Even if the petitioner go off to appear before the Court for cross examination, she can file petition for appointment of advocate commissioner to record cross examination subject to permissibility under law. Appearance on one or two days i.e. on the date of reconciliation or on the date of recording cross examination, as such the inconvenience expressed by the petitioner is not a ground to exercise power under Section 24 CPC to withdraw and transfer OP.

The other ground urged before this Court by the petitioner is that she is unable to undertake journey covering distance of 350 kms from Kuchipudi to Secunderabad. As discussed above, when the petitioner is not required to appear on every date of adjournment and that the petitioner aged 25 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 Secunderabad. 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 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

¹ AIR 1928 Lah 159

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.

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

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

M. SATYANARAYANA MURTHY, J

13.11.2018

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