

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P.No.224 OF 2017

ORDER:

This petition is filed under Section 24 Code of Civil Procedure (for short "C.P.C.") to withdraw H.M.O.P.No.43 of 2016 pending on the file of the Senior Civil Judge's Court at Vijayanagaram and transfer the same to Family Court at Eluru.

The petitioner contended that she is staying at Seetharamapuram, West Godavari District. The main reason for claiming relief is that, the petitioner being a lady is unable to undertake journey covering distance of more than 322 Kms and she is also facing financial problems to meet the travelling and other incidental expenses.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition.

The petitioner is required to appear before the Court for reconciliation and not on other dates of adjournments except for recording of cross-examination, but the Apex Court in "**Krishna Veni Nagam v. Harish Nagam**¹" suggested another mode of recording evidence avoiding personal appearance i.e. recording evidence by video conference, but the said principle is reversed to some extent in "**Santhini v. Vijaya Venketesh**²"

In "**Santhini v. Vijaya Venketesh**" (referred supra) the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taken 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

¹ (2017) 4 SCC 150

² (2018) 1 SCC 1

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.

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 IInd 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) 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 the 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 (supra) is overruled to the aforesaid extent.”

A co-joint reading of both judgments in “**Krishna Veni Nagam v. Harish Nagam**” and “**Santhini v. Vijaya Venketesh**” (referred supra) indicates that for reconciliation proceedings parties have to appear as the proceedings have to be taken up in camera. If, both parties are willing to record evidence by video conference, the Court can follow the procedure for recording evidence by video conference. Therefore, distance is not ground for granting relief.

No doubt, the petitioner being a lady may face difficulty to appear before the Senior Civil Judge at Vijayanagaram on every date of adjournment and that itself is not a ground to withdraw and transfer the same to some other Court and if the Senior Civil Judge at Vijayanagaram is directed not to insist her appearance on every date of adjournment, as it is not the requirement under Hindu Marriage Act and as long as the Counsel engaged by her is representing the case of the petitioner, this inconvenience will no more be available to the petitioner. Hence, the Senior Civil Judge at Vijayanagaram is directed not to insist her appearance except on the dates whenever her personal appearance is required, if for any reason the counsel did not appear and represent the matter,

the Court is permitted to pass appropriate order in accordance with law.

The other difficulty expressed by the petitioner is that she is unable to meet the travelling and other incidental expenses.

If a direction is issued to the respondent to pay travelling and other incidental expenses to the petitioner and the companion, who accompanies her to appear before the Senior Civil Judge at Vijayanagaram in connection with H.M.O.P.No.43 of 2016, it would serve the purpose.

The only ground to be considered for withdrawal and transfer the petition is convenience or inconvenience of the parties.

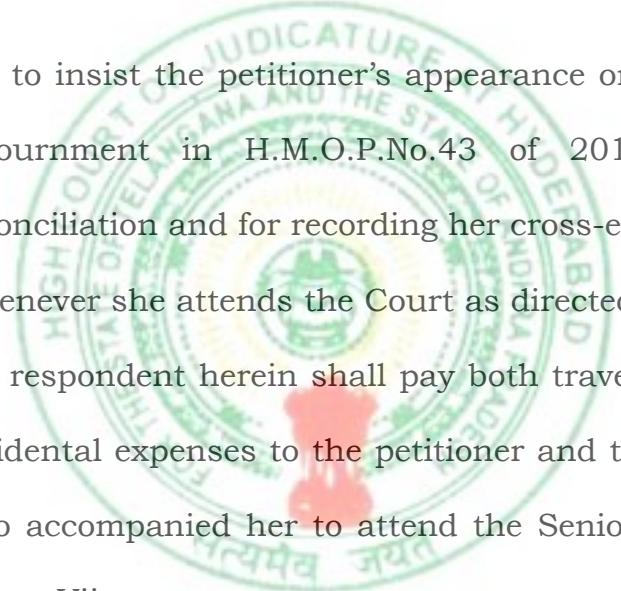
Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court under its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of C.P.C. extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

Therefore, I find absolutely no ground to withdraw H.M.O.P.No.43 of 2016 pending on the file of the Senior Civil Judge's Court, Vijayanagaram, and transfer the same to Family Court at Eluru

In the result, the petition is disposed of without costs and the Senior Civil Judge, Vijayanagaram is directed as follows:

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- (1) not to insist the petitioner's appearance on every date of adjournment in H.M.O.P.No.43 of 2016 except for reconciliation and for recording her cross-examination.
 - (2) Whenever she attends the Court as directed by the Court, the respondent herein shall pay both traveling and other incidental expenses to the petitioner and the companion, who accompanied her to attend the Senior Civil Judge's Court, Vijayanagaram.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 16.11.2018

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