

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEOUS PETITION No.706 of 2016

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of CPC, is filed to withdraw O.P.No.1803 of 2015 on the file of Additional Judge of Family court, City Civil Court at Hyderabad and transfer to Judge, Family Court at Visakhapatnam, on the ground that the petitioner is working as School Assistant in State Project Director Sarva Siksha Abhayan, Near L.B.Nagar Stadium, Hyderabad, but now residing at D.No.1-108-11/1, Raghava Nilayam, Sector-8, Ushodaya Junction, MVP Colony, Visakhapatnam, taking care of a child, who is now prosecuting B.Tech in Geetham University at Visakapatnam, and her another daughter, who is staying with her husband, is prosecuting intermediate first year at Vijayawada and it is difficult for her to appear before the Court at Hyderabad on every date of adjournment and therefore, taking into consideration, the inconvenience of the wife requested this Court to withdrawn and transfer OP No.1803 of 2015 to the Judge, Family Court at Visakhapatnam from Addl. Judge of Family Court, City Civil Court, Hyderabad.

The respondent filed counter denying the material allegation while admitting filing of OP No.1803 of 2015 pending on the file of Addl. Judge of Family court at Hyderabad and contended that the petitioner secured employment in the year 1998 as Secondary Grade Teacher in Z.P.E. School, M.K.Patnam, Rolugunta Mantal, Visakhapatnam and from that day, he subjected her to harassment both physically and mentally are false. It is also contended that there are absolutely no grounds to withdraw and transfer the OP and that petitioner is hale and healthy and receiving senior grade pay in government service while imparting

education and she is enjoying number of holidays including optional holidays, casual leaves, special leaves, paid leaves and medical leaves etc., and therefore, the grounds urged by the petitioner are not sufficient grounds to withdraw and transfer the OP.

During hearing, Smt Vasudha Nagaraj, learned counsel for the petitioner contended that convenience of the wife has to be taken into consideration while exercising power under Section 24 CPC and finally requested this Court to transfer the OP to the Judge, Family Court at Vijayawada, which is a convenient place, to both parties to undertake journey for six hours instead of 12 hours by the wife alone and that apart, her second daughter is prosecuting her education at Vijayawada i.e., first year intermediate and prayed to withdraw and transfer the OP.

The respondent/husband opposed the petition on the ground that when the cause of action arose at Hyderabad, the Court cannot transfer the OP at the convenience of the petitioner alone without taking into consideration the convenience of the respondent while considering application under Section 24 of CPC.

Admittedly, the petitioner/wife is working as Secondary Grade Teacher and the respondent is working as Legal Manager at Hyderabad and therefore, both wife and husband are entitled to avail different kinds of leaves in their employment. The only ground urged before this Court is that the convenience of the petitioner has to be taken into consideration as she has to undertake journey covering more than 800 Km, which is 12 hours journey from Visakhapatnam to Hyderabad, but that itself is not a ground to withdraw and transfer the petition to some other Court in view of the law declared by the Apex Court in *Santhini v. Vijaya Venketesh*¹, the Apex Court discussed the law declared in various judgments, where

¹ (2018) 1 SCC 1

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 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 Ind 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 dwelt 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.”

No doubt, the petitioner is required to appear before the Court on every date of adjournment, in view of special procedure prescribed under Family Court Act and if the Additional Judge of Family Court at Hyderabad, is directed not to insist her appearance in compliance of the provisions of the Act, it would serve the purpose. Therefore, the Addl. Judge of Family Court, City Civil Court at Hyderabad, is directed not to insist the petitioner's appearance on every date of adjournment, except on the dates of when her personal appearance is required by the Court including re-conciliation and recording of cross examination of the petitioner by the respondent if she wishes to examine herself as a witness on her behalf or on any other day, as long as she is being represented by her counsel. However, this Order will not preclude the Additional Judge of Family Court, City Civil Court at Hyderabad, to pass any order in accordance with law in the event of her counsel failed to represent case before the Court.

At the end, the learned counsel for the petitioner requested this Court to withdraw and transfer the OP to Vizayawada, where neither of the parties are residing and if the petition is allowed to be tried by the Judge, Family Court at Hyderabad, it is inconvenient for the petitioner alone and if it is transferred to the Judge, Family court at Vizayawada, it is inconvenient to both petitioner and respondent. Therefore, this Court is not inclined to exercise discretionary power under Section 24 of CPC to withdraw and transfer the OP to the Family Court at Vijayawada.

In view of my foregoing discussion, the Court at Hyderabad, is directed asunder:

- "1. Not to insist the personal appearance of the petitioner on every date of adjournment in O.P.No. 1803 of 2015 pending on its file as long as her counsel is appearing and representing the case except on the day when reconciliation proceedings will be taken up or on the day when her cross-examination is required to be recorded or on any other day when her personal appearance is required as directed by it;
2. The above direction would not preclude the Court at Hyderabad from passing any order in accordance with law, in the event of her counsel fails to appear and represent the matter."

With the above directions, the transfer civil miscellaneous petition is dismissed. Pending miscellaneous petitions, if any, in this petition shall stand closed in consequence.

M. SATYANARAYANA MURTHY, J

Dt: 06-03-2018

eha

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEOUS PETITION No.706 of 2016

Dt. 06.03.2018

eha

