

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.No.703 of 2016

ORDER:

This petition under Section 24 of C.P.C. is filed to withdraw G.W.O.P.No.1808 of 2015 on the file of Judge, Family Court, City Civil Court, Hyderabad and transfer to Family Court at Vijayawada on the ground that by the time petition was filed, the petitioner was at Hyderabad and after bifurcation of the State, she was transferred to Vijayawada working as Deputy Executive Engineer, Irrigation and CAD Department and permanent resident of Vijayawada and on account of her transfer, it is difficult for her to appear before the Judge, Family Court at Hyderabad, while attending to her employment in the Irrigation Department and therefore, she has sought for withdrawal of G.W.O.P.No.1808 of 2015 filed under Section 7 to 10 of the Guardian and Wards Act, 1890 (for short "the Act") claiming declaration that petitioner is only natural guardian of her minor children namely Master Lakshmi Pranav Chakravarthy, whose date of birth was 10-03-2008 and Baby Sreeya, whose date of birth was 07-01-2014.

Learned counsel for the petitioner contended that it is difficult for the petitioner to appear before the Judge, Family Court at Hyderabad on every date of adjournment, if the petition is allowed to be tried by Judge at Family Court, Hyderabad and it is convenient to her to attend the Court at Vijayawada, as she was already transferred from Hyderabad to Vijayawada and requests this Court to withdraw G.W.O.P.No.1808 of 2015 and transfer the same to Judge, Family Court, Vijayawada.

The Guardian OP was filed by the respondent herein for the relief of declaration that he is the natural guardian and it is admitted

fact that by the date of filing petition, minor children were with mother i.e. the petitioner herein and she was residing at B.K.Guda Road, Balkampeta, SR Nagar, Hyderabad. Therefore, according to Section 9 of the Act , the petition filed for declaration and custody of minor children, it is to be filed within the jurisdiction where the minor children were residing ordinarily and now the petitioner who is having custody over the two children and she is transferred to Vijayawada and children are with her.

The only ground raised by the petitioner before this Court is that there are none to take care of her children and it is difficult for her to appear before the Judge, Family Court at Hyderabad on every date of adjournment. The petition was filed under Section 7 to 10 of the Act and she is not required to appear before the Court on every date of adjournment. However, the jurisdiction cannot be changed whenever the party shifts from one place to other. By that time, minor children were residing at Hyderabad whose custody is claimed by the respondent within the jurisdiction of Judge, Family Court, Hyderabad. If such request is accepted and if OP is withdrawn and transferred from one Court to other, the petitioner being employee, whose services are transferable, cases pending before Courts cannot be transferred to place where, she is transferred. If for any reason she requires to appear before the Judge, Family Court at Hyderabad, her personal appearance can be dispensed with on all dates of adjournment except whenever her personal appearance is required, as long as her counsel representing her case. But this order will not preclude the Court from passing any order in accordance with law, in the event of her counsel fail to represent the OP.

The main contention of the petitioner is that inconvenience to appear and it is main ground to exercise discretionary jurisdiction under Section 24 CPC. No doubt it is one of the considerations, but when Guardian OP is filed, both parties were staying at Hyderabad, on account of transfer, pending OP cannot be withdrawn and transferred and if such request is accepted, it causes inconvenience to the respondent. Therefore, to strike balance between both the petitioner and the respondent without change or diverting the jurisdiction that conferred on the Judge, Family Court, Hyderabad, I am not in a position to exercise my discretion to withdraw from Judge, Family Court, City Civil Court, Hyderabad and transfer the Guardian OP to Family Court, Vijayawada. One of the judgments of Apex Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others***¹, laid down the following guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

- (1) Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (2) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.
- (3) Issues raised by the parties.
- (4) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.
- (5) important questions of law involved or a considerable section of public interested in the litigation.
- (6) interest of justice demanding for transfer of case etc.,”

¹ 2008 (3) SCC page 659

One of the conditions is balance of convenience or inconvenience to the plaintiff or the defendant or the witnesses and the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the points involved in the suit.

In view of the above, keeping in view of inconvenience of both parties, I am not inclined to change or divert the jurisdiction that conferred on the Court at Judge, Family Court, City Civil Court, Hyderabad on the date of filing petition as the petitioner herein along with minor children were ordinarily residing at B.K.Guda Road, Balkampeta, SR Nagar, Hyderabad and as such, the petition is liable to be dismissed. However, the Judge, Family Court, City Civil Court, Hyderabad is directed not to insist personal appearance except whenever her personal appearance is required and as long as her counsel representing her case. But this order will not preclude the Court from passing any order in accordance with law, in the event of petitioner's counsel fail to represent the OP.

With the above direction, the TRCMP is disposed of. In consequence, Miscellaneous Petitions, if any, pending in this petition shall stand dismissed.

12-03-2018
NM

M. SATYANARAYANA MURTHY, J