

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR. CIVIL MISCELLANEOUS PETITION No.356 of 2016

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the CPC, is filed to withdraw O.P.No.2 of 2015 filed by the respondent/husband before Junior Civil Judge at Medak District and transfer the same to Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court at Hyderabad, City Criminal Court, Hyderabad, on the ground that the said OP was filed as a counter blast to C.C.No.125 of 2016 pending on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad, and M.C.No.481 of 2015 pending on the file of Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court at Hyderabad and though the respondent is well aware of the pendency of these two cases at Hyderabad, filed the present O.P.No.02 of 2015 before Junior Civil Judge at Medak District having no territorial jurisdiction and the petitioner is residing at Hyderabad and she was necked out from the house by the respondent causing mental and physical harassment subjecting the petitioner to cruelty for compliance of illegal demand i.e., for payment of additional dowry without taking care and welfare of the minor child, who is aged 10 months by the date of filing the petition, and thus, the petition was filed by the respondent in a Court having no territorial jurisdiction and prayed to withdraw and transfer the case to Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court at Hyderabad.

No Counter affidavit is filed by the respondent.

Heard learned counsel for the petitioner and the learned counsel for the respondent.

The main contention of the petitioner before this Court is that the Court at Medak had no territorial jurisdiction to entertain the petition. The respondent/husband filed the petition for restoration of conjugal rights before Junior Civil Judge at Medak making certain allegations. Whereas the main contention of the petitioner/wife is that she was necked out from the house by the respondent and since then she is staying within the jurisdictional limits of Hyderabad and drawn the attention of this Court to Section 281 of Mohomedan Law in support of her contention and it deal with the suit filed for restitution of conjugal rights. According to Section, 281 of Mahomedan Law, where a wife without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights and under the Mahomedan law, a wife would not be entitled successfully to defend a suit for restitutiton of conjugal rights on the basis of a simple fact that the husband has another wife. Even if such a defence is raised, the suit will be decreed. Thus, the position is that a decree for restitution of conjugal rights can be passed eventhough the husband has another wife. But, the matter is quite different when one has to consider the provisions of Section 125 of Criminal Procedure Code. The explanation of Sub Section (3) makes it abundantly clear that if the husband had contracted a marriage with another woman, then that itself would be a just ground for his wife for refusal to live with him. Consequently when a claim for maintenance under Section 125 of the Criminal Procedure Code, is made the fact of the husband having the second wife will be relevant for the purpose of deciding as to whether the wife has a just ground to live separately from the husband. But, said provision did not deal with territorial jurisdiction of the Court. Even according to general rule, the suit can be filed where the cause of action arose. According to the petitioner, she was necked out from the house by the respondent and now she is residing within the jurisdiction limits of Hyderabad. However, this Court, while dealing with an application filed under Section 24 of CPC, cannot decide

the territorial jurisdiction of the court which is a mixed question of fact and law, in view of the limited scope under Section 24 of CPC. Hence, on the ground of lack of territorial jurisdiction, the petition cannot be withdrawn and transferred to the Court at Hyderabad.

The other contention of the petitioner is that she cannot undertake journey while attending other two cases, referred above, which are pending before different Courts at Hyderabad. The personal appearance of the petitioner on every date of adjournments is not an imperative like the proceedings under Family Court Act and these proceedings are governed by Code of Civil Procedure and therefore, the personal appearance is not necessary on every date of adjournment, as long as she is being represented by her counsel before the Court at Medak. However, the Junior Civil Judge at Medak is directed not to insist personal appearance of the petitioner/wife on every date of adjournment as well as she being represented by her counsel except on the dates when her personal appearance is required. Hence, I find that none of the grounds urged are sufficient to exercise jurisdiction under Section 24 of CPC to withdraw and transfer the case and consequently, this petition is liable to be dismissed. However, the Order will not preclude the Court from passing any order, in accordance with law, in the event of her counsel failure to represent her.

Accordingly, this Transfer Civil Miscellaneous Petition is dismissed leaving it open to the Court to decide the territorial jurisdiction if the Court find that it lacks territorial jurisdiction, and pass orders under Order 7 Rule 10 10-A CPC,

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 14-03-2018
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