

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TR.CIVIL MISCELLANEOUS PETITION NO.397 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw O.P.No.1967 of 2015 pending on the file of Judge, Family Court, at L.B.Nagar and transfer the same to the file of Judge, Family Court, Visakhapatnam.

The contention of the petitioner/wife is that she being lady unable to undertake journey from Visakhapatnam to Hyderabad along with two children covering distance of 700 kms and that she filed maintenance case and application under Section 12 of the Protection of Women from Domestic Violence Act at Visakhapatnam. Therefore, requested to withdraw and transfer O.P.No.1967 of 2015 from the file of Judge, Family Court, at L.B.Nagar to the file of Judge, Family Court, Visakhapatnam.

During hearing, learned counsel for the petitioner explained the inconvenience being caused to the petitioner to appear before the Judge, Family Court, at L.B.Nagar, undertaking journey of 700 kms being lady and finally requested to dispense with her appearance before the Court, in case the Court is not inclined to withdraw and transfer the case.

Though notice was served on respondent, none appeared.

O.P. is pending before the Judge, Family Court, at L.B.Nagar and that the petitioner allegedly filed maintenance case and DVC. Therefore, on the ground of pendency of maintenance case and DVC, O.P. cannot be withdrawn and transferred. Even if O.P. is transferred to Visakhapatnam Court, that cannot be tried by the Judicial Magistrate of First Class.

The other ground that the petitioner pleaded inconvenience to appear before the Court at L.B.Nagar, Hyderabad. No doubt, it is difficult to undertake journey to appear before the Court on every date of adjournment. In case O.P. is withdrawn and transferred from Hyderabad to Visakhapatnam, the respondent has to face same difficulty. The degree of difficulty may vary from men to women, but that itself is not a ground to decide the petition. According to Section 11 of the Family Court's Act, if there is any serious allegation touching the character of either of the parties, the Court may proceed with the trial in-camera.

The Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹ laid down certain guidelines for recording evidence in matrimonial cases. Those guidelines are modified by the Full Bench of the Apex Court in **Santhini v. Vijaya Venketesh**². However, laid down three guidelines and the one of the guideline is that after completion of reconciliation proceedings, in the event of failure, the parties may chose to examine by video conference and if they gave consent for such video conference, the Court can proceed to record evidence of witnesses by video conference, but till that stage, the petitioner has to appear before the Court only for limited purpose of reconciliation. Therefore, the personal appearance of the petitioner on the dates of adjournments except on the date of reconciliation and for record her cross examination, is dispensed with as long as she being represented by counsel, this will not preclude the Judge, Family Court from passing any order in accordance with law. However, the petitioner is at liberty to file appropriate application for recording her cross examination by appointing an advocate commissioner, even to avoid her appearance before the Court for recording cross examination. Whenever, the petitioner appears before the Court in connection with O.P, the respondent is directed to pay travelling allowance and other incidental expenses including stay and food etc. of the petitioner and the person who accompanying her.

With the above direction, 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

24.10.2018

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¹ (2017) 4 SCC 150

² (2018) 1 SCC 1