

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO. 400 OF 2018

ORDER:

This transfer civil miscellaneous petition is filed to withdraw H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada.

The respondent/husband filed H.M.O.P.No.65 of 2018 for dissolution of marriage by granting decree of divorce on the ground of cruelty. The petitioner/wife urged the following grounds for withdrawal of H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada, that, The Senior Civil Judge, Tanuku lacking territorial jurisdiction, as no cause of action arose, as the respondent/husband filed a petition under Section 9 of Hindu Marriage Act, seeking decree of restitution of conjugal rights vide O.P.No.73 of 2016, which is now pending and again filed an application for grant of divorce before the Senior Civil Judge, Tanuku under Section 13(1)(ib) of Hindu Marriage Act and that it is difficult for the petitioner/wife to travel along with a female child aged 03 years by undertaking journey of 91 kms from Kakinada to Tanuku.

During hearing, learned counsel for the petitioner while reiterating the grounds urged in the petition, has drawn attention of this Court to the order passed by this Court in Tr.CMP No.322 of 2016 dated 24.01.2018 and a strange ground is raised during argument that, the petitioner's father is suffering from heart

ailment and she has to look after her father and on this ground also, requested to withdraw H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada and finally contended that, a complaint was lodged, but no crime was registered.

The sole ground urged in the petition is the inconvenience being caused to the petitioner/wife to undertake journey covering distance of 91 kms from Kakinada to Tanuku to appear before the Court on the dates of all adjournments. The petition pending before the Senior Civil Judge, Tanuku and the provisions of Family Courts Act have no application to the present case and the petitioner is not required to appear before the Court on every date of adjournment unlike Family Court cases. At best, the petitioner/wife is required to appear before the Court on the date of reconciliation proceedings and on the date of recording her cross-examination. Therefore, her appearance is required only on two occasions. Further, the petitioner is aged 25 years as on the date of filing petition. So, she can undertake journey along with her child of 3 years. She may avoid even her appearance before the Court for recording cross-examination by filing an application to appoint an Advocate Commissioner to record her cross-examination and evidence also. Therefore, distance alone is not a ground to withdraw H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada. Further, the Senior Civil Judge, Tanuku, West Godavari is directed not to insist for the personal appearance of the petitioner/wife on every date of adjournment, except for reconciliation proceedings and for

recording her cross-examination, when no application is filed for appointment of an Advocate Commissioner to record her cross-examination.

In the recent judgment “**Santhini v. Vijaya Venketesh**¹” the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taking 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 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

¹ (2018) 1 SCC 1

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 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 v. Harish Nagam [JT 2017 (3) 190] is overruled to the aforesaid extent.”

Thus, in view of Section 11, matrimonial disputes have to be conducted in camera proceedings. In the event of failure to reconcile the dispute, the parties may choose to record their evidence by video conferencing and therefore, the evidence of the petitioner/wife can also be recorded by video conference, if such facility is available, subject to giving consent for recording her evidence by video conference.

In view of the law laid down by the Apex Court, the ground urged by this petitioner/wife i.e. inconvenience to undertake journey covering distance of 91 kms to appear before the Senior Civil Judge, at Tanuku is not a ground to exercise power under Section 24 to withdraw H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada.

A strange contention is raised before this Court about the ill-health of the father of the petitioner/wife. The petitioner/wife married the respondent and her responsibility is minimum and on the ground of her father suffering from heart ailment/ill-health, H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari cannot be withdrawn and transferred Senior Civil Judge Court at Kakinada. That too, this is not supported by any pleadings in the petition. Therefore, I find no ground to withdraw H.M.O.P No.65 of 2018 pending on the file of Senior Civil Judge, Tanuku, West Godavari and transfer the same to Senior Civil Judge Court, Kakinada.

However, the Senior Civil Judge, Tanuku is directed not to insist personal appearance of the petitioner/wife on every date of adjournment as long as she is represented by her counsel, except on the date of reconciliation and on the date of recording cross-examination, in the event, no application is filed for recording cross-examination for appointment of an Advocate Commissioner or when she did not give consent for recording her cross-examination by video conference.

This order will not preclude the Senior Civil Judge, Tanuku from passing any order, in accordance with law, in the event of the petitioner's counsel failure to represent the petitioner.

Accordingly, the transfer civil miscellaneous petition is disposed of.

Consequently, miscellaneous petitions pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 26.10.2018

Note: copy by 30.10.2018

b/o
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