

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TR.C.M.P.No.447 OF 2018

ORDER:

This petition is filed under Section 24 of the Code of Civil Procedure, 1908, seeking to withdraw H.M.O.P.No.24 of 2018 from the file of the Court of the Principal Senior Civil Judge, Tirupati, Chittoor District, and transfer the same to the file of the Court of the Principal Senior Civil Judge, Nellore.

2. A perusal of the record reveals that the petitioner sent notice to the respondent's address as mentioned in H.M.O.P.No.24 of 2018. Learned counsel for the petitioner submitted that the respondent intentionally avoiding to receive the notice. To substantiate the arguments, he has drawn the attention of this Court to **M.K. Tirupathi Rao v. Deputy General Manager, Syndicate Bank, Industrial Relations Section, Zonal Office, Hyderabad¹**. As per the principle enunciated in the case cited supra, if the notice sent to the respondent is returned with an endorsement that the respondent left, that itself amounts to service of notice. Hence, this Court is inclined to pass orders on merits in the absence of the respondent.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 14.08.2014 in Nellore Town as per Hindu Rights and Caste Customs. Out of the lawful wedlock, the petitioner and the respondent were blessed with one daughter. The petitioner filed M.C.No.53 of 2016 on the file of the Family Court, Nellore, against the respondent under Section 125 Cr.P.C. seeking maintenance. The petitioner also filed D.V.C.No.19 of 2015 on the file of the Court of the Special Additional Judicial Magistrate of First Class, Nellore, against

¹ 2016 (3) ALT 363

the respondent seeking various reliefs. The respondent is also an accused in C.C.No.614 of 2016 on the file of the Court of the Judicial Magistrate of First Class, Nellore. While things stood thus, the respondent filed H.M.O.P.No.24 of 2018 on the file of the Court of the Principal Senior Civil Judge, Tirupati, under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, against the petitioner for dissolution of marriage between them.

4. It is the case of the petitioner that she is facing much difficulty to travel from Nellore to Tirupati along with her daughter to prosecute H.M.O.P.No.24 of 2018. Invariably, the respondent has to attend the Family Court, Special Additional Judicial Magistrate of First Class Court and Judicial Magistrate of First Class Court at Nellore in view of the pendency of M.C.No.53 of 2016, D.V.C.No.19 of 2015 and C.C.No.614 of 2016 respectively.

5. While deciding the petitions of this nature, the Court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings, more particularly, the wife. As per the principle enunciated in **V.Sailaja v V.Koteswara Rao**², **Rachna Kanodia v. Anuk Kanodia**³ and **Sumita Singh v. Kumar Sanjay**⁴, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife and children.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the considered view that the petitioner deserves the relief sought for.

² AIR 2003 AP 178 = 2003 (1) ALD 673 = 2003 (1) APLJ 441

³ 2001(7) Supreme 96

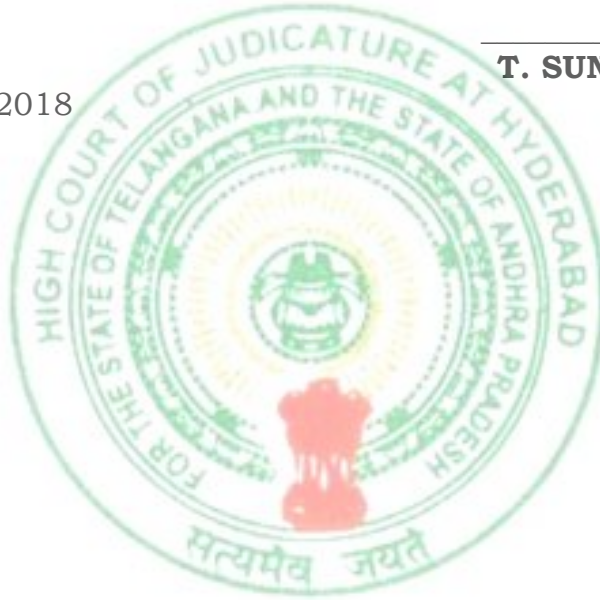
⁴ AIR 2002 SC 396

7. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.24 of 2018 is withdrawn from the file of the Court of the Principal Senior Civil Judge, Tirupati, and transferred to the file of the Court of the Principal Senior Civil Judge, Nellore, for disposal in accordance with law.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this petition shall stand closed.

17th December, 2018
MD



T. SUNIL CHOWDARY, J