

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.400 of 2016

ORDER:

This transfer civil miscellaneous petition is filed by the petitioner, under Section 24 of CPC, seeking to withdraw H.M.O.P.No.48 of 2016 from the file of the Court of Senior Civil Judge, Sattenapalli, Guntur District and transfer the same to the file of the Additional Family Court, Visakhapatnam to be tried along with O.P. Nos.219 and 221 of 2016.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 16.3.2014 at Kamala Priya Function Hall, Visakhapatnam, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. For obvious reasons, disputes arose between the petitioner and the respondent; therefore, the petitioner has been residing at her parents' house at New Railway Colony, Visakhapatnam. While the things stood thus, the petitioner filed O.P. No.219 of 2016 on the file of the Additional Family Court, Visakhapatnam, against the respondent seeking maintenance under Section 125 Cr.P.C. The petitioner also filed O.P. No.221 of 2016 on the file of the Additional Family Court, Visakhapatnam, against the respondent under Section 13(1)(ib) of the Hindu Marriage Act, for dissolution of the marriage between them. Be that as it is, the respondent filed H.M.O.P. No.48 of 2016 on the file of the Court of Senior Civil Judge, Sattenapalli, against the petitioner under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights.

4. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner, to travel from Visakhapatnam to Sattenapalli, without the assistance of one of the male members of the family. Filing of M.C., also indicates the financial status of the petitioner. Invariably the respondent has to attend the Additional Family Court, Visakhapatnam in view of pendency of O.P. Nos.219 and 221 of 2016. Further, the relief sought in O.P. No.221 of 2016 is comprehensive one when compared with the relief sought in H.M.O.P. No.48 of 2016.

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 to the wife and children. As per the principle enunciated in **T.Gayatri Devi v Dr.Tallepaneni Sreekanth¹, Sumita Singh v. Kumar Sanjay² and Rachna Kanodia v. Anuk Kanodia³**, 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, I am of the considered view that the relief sought by the petitioner can be granted. The learned counsel for the respondent submitted that the presence of the respondent may be dispensed before the Additional Family Court, Visakhapatnam on each and every date of adjournment.

¹ 2013 (6) ALT 42 (SC)

² AIR 2002 SC 396

³ 2001 (7) Supreme 96

7. Accordingly, the Transfer CMP is allowed. H.M.O.P. No.48 of 2016 is withdrawn from the file of the Court of Senior Civil Judge, Sattenapalli, Guntur District and transferred to the file of Additional Family Court, Visakhapatnam, for disposal in accordance with law. The presence of the respondent before the Additional Family Court, Visakhapatnam in H.M.O.P.No.48 of 2016, on each and every date of adjournment, is dispensed with. However, he shall appear before the Additional Family Court, Visakhapatnam, as and when his presence is so required in H.M.O.P.No.48 of 2016. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 24.9.2018
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T. SUNIL CHOWDARY, J

