

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO. 603 OF 2018

ORDER:

This petition is filed under Section 24 of C.P.C to withdraw H.M.O.P.No.11 of 2018 on the file of Senior Civil Judge, Nandigama, Krishna District and transfer the same to the file of Family Court, Guntur District, on the sole ground that the petitioner is staying at Guntur and whereas, H.M.O.P.No.11 of 2018 was filed before Senior Civil Judge, Nandigama, Krishna District, where no part of cause of action arose in the territorial jurisdiction of Senior Civil Judge, Nandigama and that the petitioner/wife cannot travel alone without any assistance to appear before Senior Civil Judge, Nandigama which is 100 kms away from Guntur to defend the divorce O.P.

During hearing, learned counsel for the petitioner/Smt. Marella Radha reiterated the grounds urged in the petition. However, she raised a strange ground that the petitioner has no means to meet the expenditure to travel to Nandigama and requested to withdraw H.M.O.P.No.11 of 2018 on the file of Senior Civil Judge, Nandigama, Krishna District and transfer the same to the file of Family Court, Guntur District.

None appeared on behalf of the respondent/husband, though service was effected on the respondent.

The sole ground raised by this petitioner is that, she is staying at Guntur, whereas, H.M.O.P.No.11 of 2018 was filed at Nandigama, which is 100 kms away from Guntur and thereby, she is unable to appear on every date of adjournment before Senior

Civil Judge, Nandigama, Krishna District and she is not required to appear as long as she is represented by her counsel in the said H.M.O.P, except on the day when reconciliation proceedings are taken up and on the date of her cross-examination.

The distance between Guntur and Nandigama is only 100 kms and the petitioner is a pharmacist by profession according to the allegations made in the petition. When she is discharging her duties as pharmacist, her inability to attend the Court by undertaking journey covering distance of 100 kms is not tenable. Therefore, on the ground that she is unable to undertake journey covering distance of 100 kms to appear before Senior Civil Judge, Nandigama, Krishna District, H.M.O.P.No.11 of 2018 cannot be transferred to the Family Court at Guntur.

One of the other contention raised during hearing is that, no part of cause of action arose within the jurisdictional limits of Senior Civil Judge, Nandigama. Such question of jurisdiction is a mixed question of fact and law and the same cannot be decided by exercising power under Section 24 of C.P.C. However, petitioner/wife is permitted to file appropriate application under Order XIV Rule 2(2) C.P.C to frame a point for consideration with regard to the jurisdiction of the Senior Civil Judge at Nandigama and on filing such application and framing such issues, the Senior Civil Judge at Nandigama is directed to decide the issue as preliminary issue, if permissible under Order XIV Rule 2(2) C.P.C.

The other contention raised before this Court is that, the petitioner/wife is unable to meet the expenses. Having admitted that the petitioner/wife is a pharmacist, she is not supposed to raise such contention that she is facing difficulty to meet the

travelling and other incidental expenses to undertake journey and appear before the Senior Civil Court at Nandigama. Even if the petitioner is not in a position to meet the expenses, the respondent/husband shall be directed to pay the travelling and other incidental expenses to undertake journey and to appear before the Senior Civil Judge's Court at Nandigama. Therefore, it is also not a ground to exercise power under Section 24 of C.P.C to withdraw H.M.O.P.No.11 of 2018 on the file of Senior Civil Judge, Nandigama, Krishna District and transfer the same to the file of Family Court, Guntur District.

In view of my foregoing discussion, I find no ground to exercise power under Section 24 C.P.C to exercise H.M.O.P.No.11 of 2018 on the file of Senior Civil Judge, Nandigama, Krishna District and transfer the same to the file of Family Court, Guntur District. Consequently, the transfer civil miscellaneous petition is liable to be dismissed.

In the result, the transfer civil miscellaneous petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date: 24.10.2018

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