

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.450 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw O.P.No.53 of 2016 pending on the file of Senior Civil Judge, Nagarkurnool and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar or any other Court having competent jurisdiction to try O.P.No.53 of 2016 filed under Section 13(1)(V) of the Hindu Marriage Act, 1955, to dissolve the marriage for granting decree of divorce.

The first ground urged before this Court is that, the petitioner is not maintaining good health, suffering from serious health problem and not in a position to undertake journey covering more than 150 kms on every date of adjournment.

The second ground is that, the petitioner lodged a report with the police against the respondent for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act and the same is registered as Crime No.323 of 2017 pending for investigation. The petitioner also filed maintenance case under Section 125 Cr.P.C which is at pre-registration stage before the Judge, Family Court, Ranga Reddy District at L.B. Nagar.

Finally, it is contended that the petitioner did not possess any independent source of income and she is not in a position to meet the expenses for travelling and other incidental expenses and

to avoid inconvenience to this petitioner, the petitioner sought to withdraw O.P.No.53 of 2016 pending on the file of Senior Civil Judge, Nagarkurnool and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar.

The respondent filed counter, admitting the health condition of the petitioner and registration of crime against the respondent, while contending that the respondent lost his employment at Bangalore as a Software Professional and he is now residing within the jurisdictional limits of Nagarkurnool. In case, the matter is withdrawn and transferred to any other court, the respondent has to face financial problems to undertake journey from Nagarkurnool to Ranga Reddy Court and prayed for dismissal of the petition.

Another ground urged before this court is that, the petitioner is suffering from serious health problem i.e she is suffering from HIV +ve, which is an incurable disease. Generally, it would be difficult for a patient who is suffering from incurable disease to undertake journey from one district to another on every date of adjournment. At the same time, the respondent is also unable to undertake journey due to financial problems, according to the contention raised by the learned counsel for the respondent.

If a direction is given to the Senior Civil Judge at Nagarkurnool, not to insist the appearance of the petitioner before the Court on every date of adjournment, except for reconciliation, or for any other purpose, for which the presence of the petitioner is required before the Court for recording her cross-examination, it

would serve the purpose. In case, she is unable to move from the house and appear before the Court, the petitioner may apply for appointment of Advocate Commissioner to record cross-examination of the petitioner, so that, she need not appear before Court, undertaking journey of more than 150 kms. Apart from that, as the petitioner is suffering from serious ailment, which is incurable, contagious and transmittable disease, it is better to confine to house.

The other ground about pendency of Crime No.323 of 2017 for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act and pendency of maintenance case at pre-registration stage are not grounds to withdraw O.P.No.53 of 2016 pending on the file of Senior Civil Judge, Nagarkurnool and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar.

In view of my foregoing discussion, the Senior Civil Judge, Nagarkurnool is directed not to insist the presence of the petitioner on every date of adjournment, keeping in mind the serious ailment of the petitioner which she is suffering, except on the date of reconciliation or on the date whenever her personal appearance is required, subject to payment of travelling and other incidental expenses by the respondent for attending the Court by the petitioner in connection with the O.P.No.53 of 2016, not only to the petitioner, but also to the person who accompanies the petitioner. The petitioner may also apply for appointment of Advocate

Commissioner, if advised, under Order XXVI Rule (1) r/w Order XVIII Rule 4(2) C.P.C for recording petitioner's cross-examination, subject to payment of expenses by the respondent to the Advocate Commissioner.

With the above direction, the Tr.C.M.P is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:02.02.2018

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