

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TR.CIVIL MISCELLANEOUS PETITION NO.678 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw F.C.O.P.No.22 of 2018 pending on the file of Senior Civil Judge, at Huzurabad, Karimnagar District, which was filed under Section 13(i)(ia) and (ib) of the Hindu Marriage Act for grant of decree of divorce dissolving marriage of the respondent with the petitioner and transfer the same to the file of Judge, Family Court, Warangal.

The petitioner being the respondent in F.C.O.P. sought for withdrawal and transfer of FCOP on the following grounds:

- i) The marriage was performed at Warangal, hence no cause of action arose within the jurisdictional limits of Huzurabad.
- ii) The petitioner is staying at Warangal and the distance between Warangal to Huzurabad is 30 kms and she being lady unable to undertake journey covering distance of 30 kms on every date of adjournment along with child aged 3 years.
- iii) M.C.No.116 of 2018 is pending before the Judge, Family Court, Warangal and the respondent before the Court in MC is appearing, hence, to avoid inconvenience to her, she sought withdrawal and transfer of FCOP.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition while contending that the inconvenience being caused to the petitioner in the event FCOP is not withdrawn and transferred.

Admittedly, the cause of action for the petition arose within the jurisdictional limits of Senior Civil Judge, Huzurabad, where the petitioner and respondent lived together lastly as wife and husband. If for any reason, the petitioner contends that the Court at Huzurabad has no jurisdiction, she is entitled to file petition under Order XIV Rule 2(2) C.P.C. with a request to frame appropriate issue regarding territorial jurisdiction and decide the same as preliminary issue. On this ground, the petition cannot be withdrawn and transferred.

The other ground that the petitioner has to travel from Warangal to Huzurabad, which is at a distance of 30 km. No doubt, it is inconvenient for the petitioner, being lady to undertake journey from Warangal to Huzurabad covering distance of 30 kms and it is not difficult task for any lady aged 30 years to travel such distance and apart from that the petitioner is not required to appear on every date of adjournment like proceedings under Family Courts' Act, except on the dates when reconciliation was taken up or on any other date for recording cross examination before the Court. If she is not in a position to appear before the Court for recording cross examination, she can file petition for appointment of advocate commissioner to record her cross examination subject to permissibility under law. Appearance on one or two days i.e. for reconciliation or on the date of cross examination, the inconvenience expressed by the petitioner is not a ground to exercise power under Section 24 CPC to withdraw and transfer FCOP.

The other ground that the maintenance case is pending before the Court at Warangal. Maintenance case is to be tried in accordance with the Criminal Procedure Code and the Rules framed thereunder, whereas the petition under the Hindu Marriage Act is to be enquired as per the proceedings under C.P.C. Therefore, pendency of maintenance case before the Court at Warangal is not a ground to withdraw and transfer FCOP.

Therefore, there are no grounds to withdraw and transfer FCOP and consequently, the transfer civil miscellaneous petition is liable to be dismissed.

Accordingly, the Transfer Civil Miscellaneous Petition is dismissed at the stage of admission. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY, J

29.10.2018

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