

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P. No.676 OF 2018

ORDER:

This Transfer C.M.P. is filed, under Section 24 of the Code of Civil Procedure, 1908 (for short 'Code'), by the petitioner - wife to withdraw O.P. No.237 of 2018 filed by the respondent - husband from the file of Judge, Family Court, Rajamahendravaram, Andhra Pradesh State, and transfer the same to the Judge, Family Court, Secunderabad, Telangana State.

2. The petitioner herein is respondent in O.P. No.237 of 2018, while respondent is petitioner. Respondent - husband filed the aforesaid O.P. under Section 9 of the Hindu Marriage Act, 1955 (for short 'Act, 1955') for restitution of conjugal rights.

3. The present Transfer CMP is filed by the petitioner - wife for withdrawal and transfer of the aforesaid O.P., on the following grounds:

i) The first ground is that she being a lady suffering from ill-health, not in a position to undertake journey from Secunderabad to Rajahmundry covering a distance of nearly 400 kilometers; second ground is that she is facing threat to appear before the Court at Rajahmundry; and third ground is ill-health.

4. During hearing, learned counsel for the petitioner reiterated the grounds mentioned in the petition.

5. The first ground is that the distance between Rajahmundry and Secunderabad is nearly 400 kilometers, it is difficult for the petitioner to appear before the Judge, Family Court at Rajahmundry undertaking journey covering such distance. No doubt, it is a difficult task for a woman to appear before the Court at Rajahmundry on every date of adjournment, but it depends upon various factors. The petitioner is aged 28 years and not at the advanced age, and at such age she can undertake journey either with or without assistance of any other male person depending upon her health. Even if the OP is withdrawn from the Court at Rajahmundry and transferred to the Court at Secunderabad, the respondent - husband has to face the same difficulty to travel nearly 400 kilometers to appear before the Court at Secunderabad on every date of adjournment. Therefore, on the ground of distance, the OP pending on the file of Judge, Family Court, Rajahmundry cannot be withdrawn and transferred. However, to avoid any such inconvenience, this Court deem it appropriate to direct the Judge, Family Court, Rajahmundry to dispense with her personal appearance on every date of adjournment except on the date of reconciliation proceedings or on the date of recording her cross-examination by the Court since her appearance before the Court is required in view of Section 11 of the Family Courts Act, 1984.

i) The Hon'ble Supreme Court in **Krishna Veni Nagam v. Harish Nagam**¹ laid down certain guidelines for recording evidence in matrimonial cases. Those guidelines are modified by the Full Bench of

¹ (2017) 4 SCC 150

the Apex Court in **Santhini v. Vijaya Venketesh**², permitting the parties to appear before the Court for reconciliation proceedings and in the event of failure of reconciliation, they may opt for recording the evidence by Video Confence by giving consent for such recording. Therefore, for reconciliation, she has to appear before the Court, but subject to giving consent for recording the evidence of witnesses, their presence, even for petitioner's present, can be dispensed with for recording evidence subject to availability of video conference facility. Therefore, to avoid inconvenience to both the parties, I find that the distance is not a ground to withdraw the OP.

6. The another ground urged before this Court is that the petitioner is suffering from ill-health and unable to appear before the Court at Rajahmundry. But, no document is produced, at least to establish that she is suffering from any kind of ill-health which disabled her from undertaking journey covering such distance. In the absence of any medical evidence, it is difficult to accept the said contention to exercise power under Section 24 of the Code to withdraw the foresaid OP from the file of Judge, Family Court, Rajahmundry and to transfer the same to the Court of Judge, Family Court at Secunderabad.

7. Yet another ground urged before this Court is that the petitioner is facing threat to her life in the hands of respondent. Except making a bald allegation in the petition, there is nothing on record to show that the petitioner is receiving any threat to her life in the hands of

² (2018) 1 SCC 1

respondent. The O.P. is of current year, and even it seems that she did not appear before the Court at Rajahmundry after receipt of notice, thereby the alleged threat to her life is not based on any material, since, no complaint was lodged against the respondent for such threat either with the police or with the Judge, Family Court, Rajahmundry, and thereby the alleged threat cannot be accepted. Even otherwise, in case the petitioner is facing such life threat really, she may make a complaint with the Judge, Family Court at Rajahmundry and in the event of filing such complaint, the Judge, Family Court, Rajahmundry is requested to provide necessary police protection to the petitioner herein whenever she attends the Court in connection with the above O.P.

8. One of the contentions raised before this Court is that no part of cause of action arose within the jurisdictional limits of the Judge, Family Court at Rajahmundry. But, that cannot be decided at this stage while exercising power under Section 24 of the Code since it is a mixed question of fact and law. However, the petitioner may file appropriate application before the Judge, Family Court at Rajahmundry to determine the territorial jurisdiction to try the O.P. and on filing such application, the Judge, Family Court, Rajahmundry may frame an issue on the point of jurisdiction and try the same as preliminary issue and decide it in accordance with law. In the event, the Judge finds that the Judge, Family Court at Rajahmundry lacks territorial jurisdiction, the Court is requested to pass appropriate order to return the petition.

9. In any view of the matter, when the petitioner is living alone without any financial assistance, to attend the Court at Rajahmundry, she has to incur expenses. Therefore, the respondent - husband is directed to pay travelling and other incidental expenses for her stay, food etc. whenever she attends the Court at Rajahmundry in connection with the above O.P. as fixed by the Judge, Family Court, Rajahmundry, and the Court is also requested to dispense with personal appearance of the petitioner - wife on all the dates except on the date of reconciliation proceedings and for recording her cross-examination or on any other date whenever her personal appearance is required before the Court. However, this order will not preclude the Judge, Family Court to pass appropriate order in accordance with law in the event of her counsel fails to represent the matter.

10. With the above direction, the Transfer Civil Miscellaneous Petition is disposed of, at the stage of admission itself. No order as to costs.

Consequently, the Miscellaneous Petitions, if any, pending in the present Transfer CMP, stand closed.

JUSTICE M. SATYANARAYANA MURTHY

October 26, 2018
Mgr