

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR.CIVIL MISCELLANEOUS PETITION NO.742 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw HM.O.P.No.53 of 2018 pending on the file of the II Additional Senior Civil Judge, Nandyala and transfer the same to the III Additional Senior Civil Judge, Kakinada.

The respondent/husband filed petition under Section 13(1)(1a) of the Hindu Marriage Act for dissolution of marriage by granting decree of divorce making various allegations.

The petitioner contended that it is difficult for her to travel and appear before the II Additional Senior Civil Judge, Nandyala undertaking journey for along distance and it is an admitted fact that O.P. as on date is posted for appearance after notice and at best, she is required to appear before the Court for reconciliation and for recording cross examination. Even if the petitioner go off to appear before the Court for cross examination, she can file petition for appointment of advocate commissioner to record cross examination subject to permissibility under law. In the event of withdrawal and transfer of the case, the respondent would also face the same difficulty to undertake journey from Nandyal to Kakinada. In such a case, the Court has to weigh the inconvenience being caused to the parties to the petition and decide in accordance with law and apart from that, exercise of power in casual manner would amount to creating jurisdiction on the Court where wife is residing or working. In view of the law laid down in **Ruchi Ram Khattar v. Sarah Narsain Shah**¹ convenience or inconvenience to any of the parties alone is not a ground and the Court has to weigh the inconvenience caused to

¹ AIR 1928 Lah 159

both parties. The same principle is reiterated by the Apex Court in **Indian Overseas Bank v Chemical Constructions Company and others**² and in **Tiruvenkitan v. Anantha Kumar**³ .

But in the later judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and others**⁴, the Supreme Court held as follows:

“Section 24 CPC confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 CPC cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

It is further held by the Supreme Court that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (i) *balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;*
- (ii) *convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;*
- (iii) *issues raised by the parties;*
- (iv) *reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;*

² 2003(11) SCC 726

³ ILR 1991 (1) Kerala 565

⁴ 2008 (3) SCC 659

- (v) *important questions of law involved or a considerable section of public interested in the litigation;*
- (vi) *“interest of justice” demanding for transfer of case, etc.*

The Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines. It is the duty of the Court to weigh the inconvenience caused to each party depending upon the facts and circumstances of the case. No doubt, inconvenience of the wife is one of the consideration, but if the pending case is transferred from one Court to other, the respondent is bound to suffer the same inconvenience and apart from that, exercise of power in casual manner would amount to creation of jurisdiction on the Court where wife is residing or working. Therefore, taking into consideration of financial condition of the petitioner, if a direction is given to the respondent to pay travelling and other incidental expenses like food, stay etc by applying principle laid down by the Full Bench of the Apex Court in ***Santhini v. Vijaya Venketesh***⁵ would suffice to meet the ends of justice. As such the II Additional Senior Civil Judge, Nandyal is requested to issue necessary directions to the respondent/petitioner to pay travelling and other incidental expenses like stay, food etc. not only to the petitioner, but also to the person, who accompanied her, whenever she attends the Court in connection with O.P.

With the above observation, the Transfer Civil Miscellaneous Petition is disposed of. No costs.

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

M. SATYANARAYANA MURTHY, J

20.11.2018

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⁵ (2018) 1 SCC 1