

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TR.CIVIL MISCELLANEOUS PETITION NO.735 OF 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed, to withdraw D.O.P.No.311 of 2018 pending on the file of the VII additional District Judge, Warangal and transfer the same to the District Court at Khammam.

The petitioner contended that she is residing within the jurisdictional limits of Judicial First Class Magistrate, Sathupalli and the distance between the District Court, Warangal and the place where she is residing is about 110 kms vide para 8 of the petition and she is unable to appear before the Court on every date of adjournment. It is also contended that the petitioner lodged report with the police V.M. Village, which is registered as Crime No.68 of 2018 for the offences Punishable under Sections 498-A, 294-B, 506 IPC read with Sections 3 and 4 of the Dowry Prohibition Act. In the event of withdrawal of D.O.P.No.311 of 2018 from the file of VII Additional District Judge, Warangal and transferred to the Principal District Judge, Khammam, it is convenient for her to prosecute both cases. As on date she is facing inconvenience to appear before the Court at Warangal and requested to withdraw D.O.P.No.311 of 2018 pending on the file of the VII additional District Judge, Warangal and transfer the same to the Principal District Judge, Khammam.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition mainly demonstrated about inconvenience for her to appear before the Court at Warangal along with 18 months child. Admittedly, the petitioner is resident of Karaigudem village, Penubally Mandal, Khammam District as per cause title in the petition and she is aged 24 years as on the date of filing the petition and that the same

address is mentioned in D.O.P. Therefore, there is no quarrel about the address of the petitioner or at least the place of residence at present and on the date of filing D.O.P. The distance between two places is about 110 kms.

When the petition under Section 10(ix) of the Divorce Act is pending before the Court, 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. Appearance on one or two days i.e. on the date of 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 OP.

It is the duty of the Court to out weigh the inconvenience caused to each party depending upon the facts and circumstances of the case. Here, the respondent is private employee and residing at L.B.Nagar, Warangal Urban. 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.

The other ground urged before this Court is that the petitioner is totally dependent upon her parents she had no independent means to undertake journey and incur incidental expenses. 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***¹ would be suffice. The VII Additional District Judge, Warangal is requested to issue necessary

¹ (2018) 1 SCC 1

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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