

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION NO.847 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw F.C.O.P.No.363 of 2017 filed under Section 9 of the Hindu Marriage Act pending on the file of Family Court and Additional District Judge, Guntur, on the sole ground that the petitioner is residing at Vijayawada, Krishna District but, whereas, O.P. is pending at Guntur, which is at a distance of 35 Kms.

The main ground urged before this Court is that she has to attend her children who are prosecuting U.K.G. and L.K.G; while attending on children, it is difficult for her to appear before the Court undertaking journey of more than 40 Kms; the respondent's family being influential in the locality, she apprehends threat to her life; and, thereby, sought withdrawal of F.C.O.P.No.363 of 2017 pending on the file of Family Court and Additional District Judge, Guntur and transfer the same to the Judge , Family Court, Vijayawada.

At the stage of admission, learned counsel for the petitioner, Smt Marella Radha, while reiterating the allegations made in the petition, mainly contended that the petitioner herself drops the children at school everyday; in case, she is required to appear before the Family Court, Guntur, she has to face inconvenience and the children should remain absent to the school; apart from that, she apprehends threat to her life at

Guntur since the respondent being influential; and requested to withdraw and transfer F.C.O.P.No.363 of 2017.

Admittedly, Maintenance Case is pending before the Metropolitan Magistrate, Vijayawada, under Section 125 Cr.P.C. and F.C.O.P.No.363 of 2017 is pending on the file of Judge Family Court, Guntur. The first and foremost contention raised before this Court is that inconvenience is being caused to the petitioner on account of petition, filed under Section 9 of the Hindu Marriage Act, before the Judge, Family Court, Guntur. No doubt, the petitioner, being a lady, may face difficulty to attend the Court at Guntur. But, that alone cannot be a ground to withdraw and transfer and it would suffice if a direction is given to the Judge, Family Court, Guntur not to insist appearance of petitioner on every date of hearing and appoint Advocate Commissioner for recording her evidence to avoid inconvenience and alleged threat in the hands of respondent subject to bearing expenses for appointment of Advocate Commissioner by the respondent. The other contention raised before this Court is that the respondent - husband is appearing before the Metropolitan Magistrate, Vijayawada in connection with Maintenance Case and, if F.C.O.P.No.363 of 2017 is withdrawn and transferred, he will not be put to any inconvenience

Diverting the jurisdiction is a matter of serious concern and power conferred by Section 24 CPC is purely discretionary. Section 24 CPC enables the Court to withdraw and transfer any case pending on the file of any Subordinate Court under its control to avoid inconvenience being caused to all the parties.

Respondent and petitioner are Medical Doctors, and it would be inconvenient for both the parties to appear before two Courts. Keeping in view the convenience of both the parties, I deem it appropriate to direct the Judge, Family Court, Guntur, not to insist appearance of the petitioner on every date of adjournment in connection with FCOP.No.363 of 2017; and, on application filed by the petitioner for appointment of Advocate Commissioner, under Order XXVI Rule 1 and Order XVIII Rule 4(2) CPC, to record her cross-examination after filing an affidavit, under Order XVIII Rule 4 CPC, the Court may consider and appoint an Advocate Commissioner to record cross-examination of the petitioner subject to bearing expenses by the respondent.

With the above direction, the Transfer Civil Miscellaneous Petition is dismissed.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

Date:19.01.2018
usd