

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 853 OF 2017

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw F.C.O.P. No.590 of 2017 pending on the file of IV Additional District Judge and Family Court, Ranga Reddy District at L.B Nagar and transfer the same to the Court of Senior Civil Judge at Gadwal.

2) The petitioner herein is the wife and the respondent is the husband. The respondent herein filed F.C.O.P. No.590 of 2017, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, seeking decree for dissolution of the marriage, on the file of the IV Additional District Judge-cum-Family Court, Ranga Reddy District at L.B Nagar.

3) The main ground urged before this Court is that the petitioner, along with her two minor female children and one minor male child, is unable to appear before the Court at L.B Nagar undertaking journey from Ieeja Village, Gadwal District, which is covering distance of 170 km on every date of adjournment, she has no means to maintain herself. That apart, the calendar case in C.C. No.431 of 2017 pending before the Additional Judicial Magistrate of First Class at Gadwal, for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition

Act, 1971 and DVC No.7 of 2017 pending before the Additional Judicial Magistrate of First Class, Gadwal, were filed by her against the respondent herein, therefore, she requested to withdraw F.C.O.P. No.590 of 2017 and transfer the same to the Court of Senior Civil Judge at Gadwal.

4) At the hearing, learned counsel for the petitioner reiterated the allegations made in the petition, and requested this Court to withdraw and transfer the same to the Court of Senior Civil Judge at Gadwal.

5) Undoubtedly, F.C.O.P. No.590 of 2017 filed by the respondent herein is pending for dissolution of the marriage by granting decree of divorce on the ground of cruelty etc., before the IV Additional District Judge—cum—Judge, Family Court, Ranga Reddy District at L.B.Nagar. Whereas C.C. No.431 of 2017 and DVC No.7 of 2017 filed by the petitioner herein are pending before the Additional Judicial Magistrate of First Class at Gadwal. But only the Court of Senior Civil Judge is established at Gadwal and no District Court is established. The Judge, Family Court is superior to the Court of Senior Civil Judge and the matter pending before the Superior Court cannot be transferred to the inferior Court.

6) The only grounds urged before this Court are that the inability of the petitioner to appear before the Judge, Family Court, Ranga Reddy District at L.B Nagar, in F.C.O.P. No.590 of 2017, on

every date of adjournment as she has to look after her three minor children at Ieeja Village, which is boarder of Karnataka of Gadwal District, and it is difficult for her to travel from Ieeja Village, Gadwal to L.B Nagar, Ranga Reddy District. However, none of these grounds are sufficient to withdraw and transfer F.C.O.P. No.590 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District at L.B Nagar, and at best her appearance can be dispensed with on every date of adjournment except on the dates where her personal appearance is required before the Court or whenever the Court directs her to appear before the Court in connection with F.C.O.P. No.590 of 2017.

7) The other contention raised by learned counsel for the petitioner is that C.C. No.431 of 2017 and DVC No.7 of 2017 are pending before the Additional Judicial Magistrate of First Class, Gadwal. Mere pendency of CC and DVC before the Additional Judicial Magistrate of First Class at Gadwal, are no grounds to withdraw and transfer to the Court of Senior Civil Judge at Gadwal. Moreover, the power conferred by this Court under Section 24 of C.P.C is limited and such power can be exercised only to avoid inconvenience to the parties and to avoid conflict of judgments in case where matters are filed before the two different Courts.

8) In the present case, as the only ground urged before this Court is inconvenience being caused to the petitioner to travel

from Ieeja Village, Gadwal to L.B Nagar, Ranga Reddy District, the question of withdrawal and transfer of F.C.O.P. to Senior Civil Judge's Court which is inferior to the Court of Judge, Family Court cannot be ordered.

9) Moreover, if the petitioner wanted to examine herself as a witness before the Judge, Family Court, Ranga Reddy District at L.B Nagar, she may file an application, for appointment of advocate commissioner, under Order XXVI Rule 1 read with Order XVIII Rule 4 (2) C.P.C to avoid her inconvenience in attending the Court and on filing such application, Judge, Family Court, Ranga Reddy District at L.B Nagar may consider the same, subject to bearing expenses by the respondent. This order will not preclude the District Judge from passing any order in accordance with law, in case her counsel failed to represent her in the petition.

10) With the above direction, this petition is disposed of. There shall be no order as to costs.

11) Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date: 22.01.2018

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