

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO.884 OF 2017

ORDER:

This petition is filed under Section 24 of C.P.C to withdraw H.M.O.P.No.161 of 2017 pending on the file of Senior Civil Judge Court, Kandukur, Prakasam District and transfer the same to Senior Civil Judge Court, Amalapuram, East Godavari.

H.M.O.P No.161 of 2017 is filed under Section 13(1)(ib) of Hindu Marriage Act for dissolution of marriage by granting decree of divorce on various grounds. The present petition is filed on three grounds.

The first ground is that, the petitioner/wife is residing at Amalapuram at her parents house and she is unable to undertake journey covering distance of 370 kms from Amalapuram, East Godavari District to Kandukur, Prakasam District. The second ground is that, the petitioner has no means to meet the incidental expenses and finally the third ground urged is that the complaint was lodged against the respondent for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act and the petitioner herein also filed M.C.No.36 of 2015 on the file of Additional Judicial Magistrate of First Class at Amalapuram, East Godavari and that the respondent is attending the Court in connection with the above cases and therefore, prayed to withdraw H.M.O.P.No.161 of 2017 pending on the file of Senior Civil Judge Court, Kandukur, Prakasam District and transfer the same to Senior Civil Judge Court, Amalapuram, East Godavari.

The petitioner being a woman may face difficulties to undertake journey to appear before the concerned Court on the date of adjournment. But, she is not required to appear before the Court on each and every date of adjournment, as long as she is being represented by her counsel in H.M.O.P.No.161 of 2017. The petitioner may appear before the concerned Court for reconciliation, recording her evidence or whenever she is directed by the Court for any specific purpose. Further, the respondent/husband is directed to pay traveling and other incidental expenses to the petitioner/wife and also to any other person who accompanies the petitioner, which would serve the purpose. Therefore, the lack of means and difficulty with regard to distance are no more grounds to withdraw H.M.O.P.No.161 of 2017 pending on the file of Senior Civil Judge Court, Kandukur, Prakasam District and transfer the same to Senior Civil Judge Court, Amalapuram, East Godavari.

The other contention is that M.C.No.36 of 2015 is pending on the file of Additional Judicial Magistrate of First Class at Amalapuram and that no prejudice would be caused to the respondent, since he is attending the Court for attending the proceedings. Maintenance case is pending before the Additional Judicial Magistrate of First Class at Amalapuram, whereas, H.M.O.P.No.161 of 2017 has to be tried by Senior Civil Judge and both the matters cannot be clubbed and decided. Mere pendency of maintenance case before Additional Judicial Magistrate of First Class at Amalapuram, is insufficient to exercise power under Section 24 of C.P.C.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court and its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

In the recent judgment “**Santhini v. Vijaya Venketesh**¹” the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taking in to consideration and held as follows:

“In “Mona Aresh Goel v. Aresh Satya Goel (2000) 9 SCC 255”; the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce

¹ (2018) 1 SCC 1

proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition.

The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In *Lalita A. Ranga v. Ajay Champalal Ranga* (2000) 9 SCC 355” the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

A two Judge Bench in *Krishna Veni Nagam v. Harish Nagam* (2017) 4 SCC 150, while dealing with transfer petition seeking transfer of a case instituted Under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act') pending on the file of IInd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction Under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:

“In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife

is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court.”

The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and circumstances of the case adverting to the earlier judgment rendered in “Ram Gulam Pandit v. Umesh J. Prasad” and “Rajwinder Kaur v. Balwinder Singh” (as referred in the judgment) and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

The Apex Court also laid down the following six guidelines.

“(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam v. Harish Nagam [JT 2017 (3) 190] is overruled to the aforesaid extent.”

In view of the law declared by the Court, the grounds raised in the petition are not sufficient to grounds to withdraw H.M.O.P.No.161 of 2017 pending on the file of Senior Civil Judge Court, Kandukur, Prakasam District and transfer the same to Senior Civil Judge Court, Amalapuram, East Godavari.

However, Senior Civil Judge, Kandukur, Prakasam District is directed not to insist for the presence of the petitioner in connection with H.M.O.P.No.161 of 2017, as long as she is represented by her counsel and this order will not preclude the Senior Civil Judge, Kandukur from passing any order in accordance with law, in the event of the petitioner's counsel fails to represent the matter. Further, the respondent is directed to pay all the necessary traveling and other incidental expenses for the petitioner and the person who accompanies her, whenever she attends the Court in connection with H.M.O.P.No.161 of 2017. In case, the petitioner feels any difficulty to give evidence before the Senior Civil Judge, Kandukur, the petitioner may apply for appointment of Advocate Commissioner under Order 26 Rule 1 r/w Section 4(2) C.P.C and on filing such application, the Senior Civil Judge, Kandukur may pass appropriate order, in accordance with law.

In the result, the petition is disposed of without costs and the Judge, Family Court at Srikakulam is directed as follows:

- (1) not to insist the petitioner's appearance on every date of adjournment in H.M.O.P.No.161 of 2017.
- (2) Whenever she attends the Court as directed by the Court, the respondent herein shall pay both travelling and other incidental expenses to the petitioner and the companion, who accompanied her to attend the Court at Kandukur, Prakasam District.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

Date:29.01.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

