

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No.885 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 the F.C.O.P.No.2142 of 2015 pending on the file of the Judge, Family Court, Ranga Reddy District, at L.B.Nagar, and transfer the same to any other Court and direct the Court to decide the interim maintenance petition expeditiously on various grounds.

The petitioner filed the present petition through her Special Power of Attorney holder U.Seshagiri Rao.

The respondent herein filed a petition for restitution of conjugal rights on 23.12.2015 and later filed a petition I.A.No.450 of 2016 which is re-numbered as I.A.No.600 of 2016 for conversion of O.P. filed for restitution of conjugal rights to divorce petition on the ground of cruelty within a span of 4 months from the date of filing the petition. The respondent herein also started attributing decease of Tuberculosis to his wife and thus subjected her to mental cruelty.

It is also contended that the respondent did not produce any piece of paper in support of his contention that the petitioner is suffering from Tuberculosis.

The petitioner sent a request through post to excuse her personal presence as she was under tremendous pressure due to stigma created by the respondent and was not in a position to move out normally and confined herself to within the four walls, but the same was not accepted by the Court.

It is also contended that the petitioner left for USA with the help of her family members in order to get rid of the trauma and to pursue her higher studies in the month of August 2016 and she had obtained a loan of Rs.18,00,000/- from Credela, as such she could not attend the Court, for which an exparte decree was passed, therefore, the order passed by the Court is contrary to the law without considering the request made by the petitioner while giving preference to the request made by the respondent.

It is also alleged that on 21.11.2017 both the petitioner and the respondent were present and the Court below directed the counsel for the petitioner to cross-examine the respondent herein and the counsel for the petitioner requested the Presiding Officer of the Court to refer the matter to mediation centre as per Supreme Court guidelines. On 21.11.2017 the Court below referred the matter to mediation centre, but granted only 5 days time for report, and the mediation centre held two sittings for settlement of disputes and submitted negative report. Thus, the Court below did not act according to the directions issued by the Apex Court. It is also contended that the petitioner filed counter-claim on 01.02.2017 and the matter was posted to 04.12.2017, the respondent requested for time for filing rejoinder and requested the petition to be posted to 05.12.2017, hence the petition was posted to 05.12.2017 for filing rejoinder. The petitioner filed I.A.No.11938 of 2017 seeking interim maintenance under Section 24 of Hindu Marriage Act and the same was not disposed of by the Court below and posted the same to 09.01.2018 for counter. The respondent filed a petition to advance hearing of the petition on 26.12.2017 stating that he is a resident of United States and it is not possible

for him to appear before the Court, accordingly the Court below advanced the petition to 02.01.2018 and posted the petition for cross-examination of the respondent,. In spite of repeated requests made by the counsel for the petitioner to dispose of the petition under Section 24 of Hindu Marriage Act, the Court below posted the petition for cross-examination of P.W.1 in O.P.No.2142 of 2015 giving more preference to the respondent, whereas the request of the petitioner was turned down and not even evincing any interest to take up the petition filed by the petitioner under Section 24 of Hindu Marriage Act. Due to step motherly treatment of the Court below, the learned counsel for the petitioner requested to withdraw the F.C.O.P.No.2142 of 2015 pending on the file of Judge, Family Court, Ranga Reddy District to transfer the same to any other Court.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition while attributing malafides to the Presiding Officer of the Court for giving such undue preference to the respondent herein while deciding the petition. It is also contended that if the petition is allowed to be tried by the Judge, Family Court, Ranga Reddy District, there is every possibility of getting adverse order and requested to allow the petition.

Whereas learned counsel for the respondent did not file any counter, but admitted that originally the petition is filed for restitution of conjugal rights, later it was converted into a petition for divorce and no undue preference was given to the respondent and the allegations made in the present petition are baseless. Judge, Family Court made endeavour to decide the petition within

the time fixed by the Act and the same cannot be faulted. It is also contended that the petitioner remained *exparte* initially and later filed a petition to set aside the *exparte* decree and the same was allowed on 06.11.2017, but she did not file any counter till 28.11.2017 though sufficient time was granted and the petitioner herein conveniently avoiding completion of trial and creating troubles not only to the respondent and attributing motive to the Presiding Officer of the Court, which cannot be encouraged by the Court and prayed for dismissal of the petition.

This Court also called for remarks of the Presiding Officer. Accordingly, this Court received remarks of the Presiding Officer concerned dated 07.02.2018, wherein he elaborately explained the reasons for taking up the F.C.O.P.No.2142 of 2015 while admitting about passing *exparte* decree and later setting aside the same, taking up reconciliation proceedings fixing the date on 13.11.2017, respondent appeared before the Court, and as the petitioner sent her counter without appearing before the Court, with an intention to give a fair opportunity to the petitioner, the petition was adjourned to 21.11.2017 and both parties were directed to appear for reconciliation. It is also submitted that the respondent came down to India for short period from United States to attend the Court proceedings, as such both the parties were directed to appear for mediation, on 28.11.2017 the file was returned stating that the case was not settled. Therefore, sufficient opportunity was given to settle the dispute before the Mediation Centre, but the petitioner did not avail the same. It is also contended that she filed counter-claim and also application under Section 24 of Hindu Marriage Act and denied the allegations made in the petition

attributing motive to him and the petitioner is avoiding her appearance for one reason or another representing by her father, who is in India and creating troubles in different ways and prayed to pass appropriate orders.

It appears from the record that the petitioner and respondent are residing at United States of America. Respondent is attending the Court in-person as and when directed by the Court and represented through his counsel, but conveniently the petitioner herein is not even attending the Court while staying at United States of America prosecuting her studies and her father U.Seshagiri Rao is attending the Court as Special Power of Attorney. The respondent is bound to appear before the Court on the dates of adjournments spending huge amount for traveling and other incidental expenses. The petitioner appears to have been enjoying the pleasure in causing inconvenience to the respondent in different ways while engaging her father as Special Power of Attorney to prosecute the proceedings.

It appears from the allegations made in the petition, the Presiding Officer of the Court adjourning the petition in short spells not affording sufficient opportunity to contest the petition. The reason for this is counsel for the respondent requested to take up the petition as it is inconvenient for the respondent herein to come down to Hyderabad on every day of adjournment as she was staying at United States America. Even otherwise, as per Section 21-B of the Hindu Marriage Act, the petition has to be disposed of within six months. It is explicit from the series of incidents, the petitioner is not cooperating for such disposal and causing

hindrances for disposal on one pretext or the other and conveniently making applications on one ground or the other and insisting the Court to decide the application while enjoying her stay at United States of America for prosecuting her studies and causing inconvenience to the respondent, who came down to Hyderabad by incurring heavy expenditure. However, the respondent is bound to appear before the Court, hence, on this ground the transfer petition cannot be allowed.

Another ground urged in the petition is that the Presiding Officer is not affording reasonable opportunity to the petitioner to prosecute the proceedings, who appears to be an experienced litigant in prosecuting the proceedings. Therefore, when the allegations made against the officer attributing motive to him in deciding the petition, in the interest of the officer and to avoid further attributions while deciding various incidental proceedings in the petition, it is appropriate to withdraw the F.C.O.P.NO.2142 of 2015 pending on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to any other Court in the interest of justice.

This Court cannot exercise its discretionary jurisdiction under Section 24 C.P.C on mere asking unless the Court satisfies that there is a possibility of conflicting decisions. However, the Apex Court in “**Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Educational Trust and others**”¹ held that Section 24 CPC confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on

¹ 2008(3) SCC 659

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.

It is further held 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;
- (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 above guidelines are illustrative, but not substantive guidelines. According to guideline No.6 the Court can withdraw any pending petition or proceeding and transfer the same to any other Court in the interest of justice.

Taking into consideration of totality of facts and circumstances and attributions made against the officer of the Court, which are prima facie false, but to avoid unnecessary harassment to the officer, it is appropriate to withdraw F.C.O.P.No.2142 of 2015 pending on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to Judge, Family Court, Kukatpally.

Accordingly, F.C.O.P.No.2142 of 2015 pending on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar is withdrawn and transferred the same to the Judge, Family Court, Kukatpally with a direction to dispose of the same in accordance with law within the time frame as per the rules framed under the Family Courts Act and all other incidental proceedings, if any..

With the above direction, the Tr.C.M.P. is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.03.2018
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