

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Transfer Civil Miscellaneous Petition No.44 of 2019

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner/wife, requesting to withdraw F.C.O.P.No.79 of 2018 from the file of the XV Additional District Judge, Ranga Reddy District at Kukatpally, and transfer the same to the Family Court at Mahabubnagar, for trial and disposal in accordance with law.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the petitioner/wife would submit that the marriage between the petitioner/wife and the respondent/husband was performed on 12.11.2010 at Khilla Ghanpur, Mahabubnagar District. Out of their wedlock, the couple were blessed with a child. Subsequently, disputes arose between the couple. Finally, the petitioner/wife left the company of the respondent/husband and starting living with her parents' house at Mahabubnagar. The petitioner/wife filed D.V.C.No.45 of 2017 before the Judicial Magistrate of First Class, Mahabubnagar, M.C.No.35 of 2017 before the Family Court, Mahabubnagar and another unnumbered Calendar Case before the Judicial Magistrate of First Class,

Wanaparthi (which arose out of Crime No.39/2017 of Wanaparthi Police Station registered for the offences punishable under Sections 323, 504, 498A of IPC and Sections 3 & 4 of the Dowry Prohibition Act) against the respondent/husband. As a counter blast to the cases filed by the petitioner/wife in the Courts at Mahabubnagar, the respondent/husband filed F.C.O.P.No.79 of 2018 before the Court of XV Additional District Judge, Ranga Reddy District at Kukatpally, under Sections 7 & 10 of the Guardians and Wards Act, 1890, seeking custody of the minor child and ultimately requested to withdraw F.C.O.P.No.79 of 2018 from the file of the XV Additional District Judge, Ranga Reddy District at Kukatpally, and transfer the same to the Family Court at Mahabubnagar, which is convenient to her.

4. On the other hand, the learned counsel for the respondent/husband would submit that the respondent/husband is a resident of Manikonda, Hyderabad. The respondent/husband filed F.C.O.P.No.79 of 2018 before the Court of XV Additional District Judge, Ranga Reddy District at Kukatpally, seeking custody of minor child. Keeping in view the bright future of the minor child, it is necessary to grant custody of minor child to the respondent/husband. There are no grounds to grant the relief claimed by the petitioner/wife in this petition and ultimately prayed to dismiss the Transfer Civil Miscellaneous Petition.

5. The material placed on record reveals that the respondent/husband has filed F.C.O.P.No.79 of 2018 on the file of the XV Additional District Judge, Ranga Reddy District at Kukatpally, seeking custody of the minor child and the petitioner/wife filed D.V.C.No.45 of 2017 before the Judicial Magistrate of First Class, Mahabubnagar, M.C.No.35 of 2017 before the Family Court, Mahabubnagar and another unnumbered Calendar Case before the Judicial Magistrate of First Class, Wanaparthi (which arose out of Crime No.39/2017 of Wanaparthi Police Station registered for the offences punishable under Sections 323, 504, 498A of IPC and Sections 3 & 4 of the Dowry Prohibition Act) against the respondent/husband. The petitioner/wife is residing at her parents' house at Mahabubnagar. She has to travel about 100 kilometres from Mahabubnagar to Hyderabad, along with the minor child, to attend the proceedings in F.C.O.P.No.79 of 2018, which certainly causes inconvenience to her. Under these circumstances, it is relevant to state that Section 19 of the Hindu Marriage Act, 1955, has been amended in the year 2003, by insertion of proviso (iii)(a). The amended Section 19(iii)(a) of the Act gives special preference to the wife to file a petition and prosecute the same, before the Court within whose jurisdiction she resides. Law is well settled that in the cases of this nature, convenience of the wife is of paramount importance. The petitioner/wife is residing at

Mahabubnagar and certainly, her attendance before the Court at Hyderabad causes inconvenience to her. She has to travel from Mahabubnagar to Hyderabad i.e., around 100 kilometres. Though small inconvenience may be caused to the respondent/husband in attending the Court at Mahabubnagar, the convenience of the wife should be preferred and shall prevail over the inconvenience, if any, which may be caused to the husband. Accordingly, this Court finds that sufficient cause is shown by the petitioner/wife for granting the relief claimed by her in this petition.

6. In the result, this Transfer Civil Miscellaneous Petition is allowed and F.C.O.P.No.79 of 2018 is withdrawn from the file of the XV Additional District Judge, Ranga Reddy District at Kukatpally, and transferred to the Family Court at Mahabubnagar, for trial and disposal in accordance with law.

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

13th November, 2019
Bvv

Dr. SHAMEEM AKTHER, J