

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

TRANSFER CIVIL MISCELLANEOUS PETITION No.179 of 2019

ORDER:

This Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, 1908, by the petitioner-wife, seeking to withdraw O.P.No.94 of 2019, pending on the file of Family Court, Ranga Reddy District, at L.B.Nagar and transfer the same to the Court of Additional District Judge, at Suryapet.

2. Heard the learned counsel for the petitioner-wife, the learned counsel for the respondent-husband and perused the record.

3. Learned counsel for the petitioner-wife submitted that the petitioner-wife is not keeping good health. The respondent-husband filed O.P.No.94 of 2019 for divorce before the Family Court, Ranga Reddy District, at L.B.Nagar. The petitioner-wife filed HMOP.No.165 of 2018, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights before the Principal Senior Civil Judge, Krishna, Machilipatnam and the same is pending. Further, the petitioner-wife filed M.C.No.58 of 2018 for maintenance and also Domestic Violence Case against the respondent-husband and they are pending before the II Additional Judicial First Class Magistrate, Machilipatnam. Learned counsel further submitted that the distance between Machilipatnam and Hyderabad is about 350 Kms and it is causing much inconvenience for the petitioner-wife to travel 350 Kms from Machilipatnam to Hyderabad, all alone, to defend the case filed by the respondent-husband in the Court at L.B.Nagar, Hyderabad, and the Court of Additional District Judge at Suryapet, which is about 200 Kms from

Machilipatnam, will be somewhat convenient to her, and ultimately prayed to transfer O.P.No.94 of 2019, pending on the file of Family Court, Ranga Reddy District, at L.B.Nagar to the Court of Additional District Judge, at Suryapet.

4. On the other hand, learned counsel for the respondent-husband would submit that the applications filed to transfer the cases relating to matrimonial disputes shall not be dealt with mechanically unless the petitioner comes with justifiable grounds. It is further submitted that the respondent-husband is ready to bear the travelling expenses etc., and the Court at L.B.Nagar, Ranga Reddy District, is convenient to her. In support of his contention, learned counsel relied upon the decision of Hon'ble Apex Court reported in *ANINDITA DAS V. SRIJIT DAS*¹ and ultimately prayed to dismiss the petition.

5. It is evident from the submissions made as well as from the record that the petitioner-wife resides at Machilipatnam and she is not keeping good health. The present petition is filed by the petitioner-wife seeking to transfer O.P.No.94 of 2019 (filed by the respondent-husband for divorce) pending on the file of the Family Court, Ranga Reddy District, at L.B.Nagar to the Court of Additional District Judge at Suryapet, on the ground that it is causing much inconvenience and also expensive for her to travel 350 Kms, all alone, from Machilipatnam to Hyderabad. The cases filed by the petitioner-wife for restitution of conjugal rights, maintenance and under Domestic Violence Act are pending in the Courts at Machilipatnam. It is pertinent to state that Section 19 of the Hindu

¹ (2006) 9 SCC 197

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 Machilipatnam and certainly, her attendance before the Court at L.B. Nagar, Hyderabad, causes inconvenience to her. She has to travel from Machilipatnam to Hyderabad, which is about 350 kilometers. The Family Court at Suryapet, would be only 200 Kms and it would be somewhat convenient to the petitioner-wife to travel 200 kms from Machilipatnam to Suryapet than 350 Kms to Hyderabad. It is also pertinent to state that her place of residence is at Machilipatnam, Krishna District i.e., in the State of Andhra Pradesh. To transfer the subject proceedings to the Court at Machilipatnam, Krishna District, the petitioner-wife has to approach the Hon'ble Apex Court and presently she has no financial support to do so. Though small inconvenience may be caused to the respondent-husband in attending the Court at Suryapet, the convenience of the wife should be preferred and shall prevail over the inconvenience, if any, which may be caused to the husband. Convenience of the wife is the prime consideration. Accordingly, this Court finds that sufficient cause is shown by the petitioner-wife to grant the relief claimed in this petition. The decision relied upon by the learned counsel for the respondent-husband in *Anindita Das (supra)* is not applicable to the case on hand.

7. In the result, this Transfer Civil Miscellaneous Petition is allowed and O.P.No.94 of 2019, pending on the file of Family Court, Ranga Reddy District at L.B.Nagar is withdrawn and transferred to the Court of Additional District Judge, at Suryapet to try and dispose of, in accordance with law.

Miscellaneous petitions, pending if any, shall stand closed. No costs.

Date: 07.11.2019
grk

Dr.JUSTICE SHAMEEM AKTHER

