

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Transfer Civil Miscellaneous Petition No.189 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 H.M.O.P.No.104 of 2017 from the file of the Senior Civil Judge, Suryapet, and transfer the same to the Court of Senior Civil Judge, Nalgonda, or to the Court of the Principal District Judge, Nalgonda, or to the Family Court, Nalgonda, for trial and disposal, in accordance with law.

2. Heard the learned counsel for both the 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 03.04.2016 at Nalgonda. Out of wedlock, they are blessed with a son by name Suhasradh. Subsequently, disputes arose between the couple and the petitioner/wife was necked out of the matrimonial home in the month of November, 2017. Left with no other option, the petitioner/wife started living at her parents' house in Nalgonda and she lodged a complaint with the Women Police Station, Nalgonda, against the respondent/husband and his family members, which was registered as Crime No.4 of 2018 and after filing charge sheet, the same was numbered as C.C.No.173 of 2018 on the file of the Judicial Magistrate of First Class, Nalgonda. The petitioner/wife also filed M.C.No.10 of 2019

against the respondent/husband, which is pending on the file of the Family Court at Nalgonda. The respondent/husband filed H.M.O.P.No.104 of 2017 before the Senior Civil Judge, Suryapet, seeking restitution of conjugal rights. The distance between Nalgonda to Suryapet is around 55 kilometres and it will be difficult for her to travel from Nalgonda to Suryapet, along with her minor child, to attend the proceedings in the Court at Suryapet and ultimately prayed to withdraw H.M.O.P.No.104 of 2017 from the Court of the Senior Civil Judge, Suryapet, and transfer the same to the Court of Senior Civil Judge, Nalgonda, or to the Court of the Principal District Judge, Nalgonda, or to the Family Court, Nalgonda, for trial and disposal, in accordance with law.

4. On the other hand, the learned counsel for the respondent/husband would submit that the respondent/husband is a resident of Suryapet. The petitioner/wife herself left the company of the respondent/husband and did not come back to lead matrimonial life, in spite of repeated requests. Left with no other alternative, the respondent/husband filed H.M.O.P.No.104 of 2017 before the Court of Senior Civil Judge, Suryapet, for restitution of conjugal rights. 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 H.M.O.P.No.104 of 2017 under Section 9 of the Hindu Marriage Act, 1955, before the Court of Senior Civil

Judge, Suryapet, seeking restitution of conjugal rights and the petitioner/wife filed a criminal case and maintenance case against the respondent/husband in the Courts at Nalgonda. The petitioner/wife is residing at her parents' house at Nalgonda. She has no source of income and she is eking out her livelihood at the mercy of her parents at Nalgonda. She has to travel about 55 kilometres from Nalgonda to Suryapet, along with minor child, to attend the proceedings in H.M.O.P.No.104 of 2017, 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 Nalgonda and certainly, her attendance before the Court at Suryapet causes inconvenience to her. She has to travel from Nalgonda to Suryapet, i.e., around 55 kilometres. Though small inconvenience may be caused to the respondent/husband in attending the Court at Nalgonda, 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 H.M.O.P.No.104 of 2017 is withdrawn from the Court of the Senior Civil Judge, Suryapet, and transferred to the Family Court at Nalgonda 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.

05th December, 2019
Vvr

Dr. SHAMEEM AKTHER, J

