

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP No.4236 of 2018

O R D E R:

This Revision is filed challenging the order dt.05.06.2018 in I.A.No.659 of 2018 in O.P.No.1518 of 2013 of the Principal Judge, Family Court, City Civil Court, Hyderabad.

2. Petitioner had filed the said O.P. against the 1st respondent for dissolution of their marriage.

3. The said O.P., had earlier been filed at Bangalore and had been transferred to Hyderabad by virtue of an order of transfer passed by the Supreme Court, which is presently pending on the file of the Principal Judge, Family Court, City Civil Court, Hyderabad.

4. Petitioner filed I.A.No.659 of 2018 citing 11 witnesses and contended that these witnesses reside at Bangalore and an Advocate Commissioner be appointed for recording their evidence at Bangalore.

5. In the affidavit filed in support of the said application, it is contended that several incidents took place at Bangalore when the parties resided there, and the proposed witnesses are neighbours; that their evidence is crucial to prove the

case of the petitioner; and since they are unable to come to Hyderabad, their evidence ought to be recorded at Bangalore through Advocate Commissioner.

6. Counter affidavit is filed opposing the said application.

7. Counsel for the petitioner placed reliance on a reply given by one of the witness by name S.R.Jayalakshmi @ Vanaja to the Station House Officer, Mirchowk Police Station when a notice was issued under 41(A) of Cr.P.C. by the said police in Crime No.52 of 2018 registered at the instance of the 1st respondent, wherein there is an allegation that the 1st respondent had been threatened by her.

8. But ultimately in the said letter, the witness stated that she was injured during a house warming ceremony at Bangalore and the Doctor had advised her not to travel and so she is not able to come to Hyderabad to give evidence and that after she became fit, she will cooperate with the police.

9. I do not attach any significance to this reply notice, since the witness specifically stated that because of her injury she was unable to come to Hyderabad and that she was prepared to come to Hyderabad after she became fit.

10. The Court below appointed the Advocate Commissioner to examine two witnesses who were aged more than 70 years, but refused to appoint an Advocate Commissioner for the recording of the evidence of rest of the witnesses. It observed that the object and purpose of transfer of case from Bangalore to Hyderabad would be defeated if trial is commenced at Bangalore on Commission. It also observed that no documentary proof is filed showing physical disability of the proposed witnesses to come and give evidence personally before the Family Court at Hyderabad.

11. Assailing the said order, this Revision is filed.

12. Counsel for the petitioner contended that the 1st respondent is threatening the proposed witnesses on telephone and they are afraid to come to Hyderabad. But there is no evidence *prima facie* to believe this allegation.

13. When the proposed witnesses are not shown to be suffering from any disability preventing them from traveling from Bangalore to Hyderabad, which is just an overnight travel, they cannot be permitted to be examined on Commission at Bangalore through an Advocate Commissioner.

14. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference with the order passed by the Court below.

15. Accordingly, this Civil Revision Petition fails and it is dismissed. No order as to costs.

16. Consequently, miscellaneous petitions pending if any, shall stand closed.

11th July, 2019.

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M.S. RAMACHANDRA RAO, J

