

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Tr.C.M.P.No.42 OF 2019

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner/wife seeking to transfer O.P.No.149 of 2018 from the file of Senior Civil Judge, Jagtial, to the file of Judge, Family Court, Nizamabad, for trial and disposal, in accordance with law.

2. Heard the learned counsel for petitioner/wife and perused the record.

3. In spite of listing the matter under the caption 'for orders', there is no representation for the respondent/husband.

4. Learned counsel for the petitioner/wife would submit that the respondent/husband filed O.P.No.149 of 2018 on the file of Senior Civil Judge, Jagtial, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short, 'the Act'), seeking divorce. The petitioner/wife is residing at Nizamabad. The Court situated at Jagtial is 100 KM away from the residence of the petitioner/wife. The petitioner/wife has no financial capacity to meet the expenses to attend the Court at Jagtial. Therefore, it is causing inconvenience to the petitioner/wife to attend the Court at Jagtial. Further, a D.V.C. case and a criminal case are pending on the file of I Additional Judicial Magistrate of First Class, Nizamabad, and ultimately, prayed to withdraw O.P.No.149 of 2018 from the file of Senior Civil Judge, Jagtial, and transfer the same to the file of Judge, Family Court, Nizamabad.

5. In view of the submissions made by the learned counsel for the petitioner/wife, the point that arises for determination is as follows:

“Whether O.P.No.149 of 2018 pending on the file of Senior Civil Judge, Jagtial, can be withdrawn and transferred to the file of Judge, Family Court, Nizamabad?”

6. Here, it is apt to refer to the decision of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh reported in Chejerla Srilakshmi Vs. Chejerla Ramesh Babu¹, wherein, the erstwhile common High Court for the States of Telangana and Andhra Pradesh, relying on various decisions of the Hon’ble Apex Court, held as under:

“The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and circumstances of the case adverted to the earlier judgment rendered in “Ram Gulam Pandit v. Umesh J. Prasad” and “Rajwinder Kaur v. Balwinder Singh” (as referred in the judgment) and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that

¹ 2018 (4) ALD 162

the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner."

7. In the instant case, the grounds putforth by the petitioner/wife for transfer of the case filed by the respondent/husband are that she has no financial capacity, it is inconvenient for her to travel from her place of residence to Jagtial to attend the proceedings in the Court at Jagtial and that a criminal case and a D.V.C. Case are pending at Nizamabad. While dealing with similar situations, this Court and the Honourable Apex Court were of the opinion that in a petition to transfer a case from one Court to another Court under the provisions of Hindu Marriage Act, 1955, it is the inconvenience of both the parties that is to be taken into consideration, but not the inconvenience to the wife alone and that transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner. Normally, this Court is inclined to allow the applications of this nature, where there are genuine reasons/circumstances to transfer the case from one Court to another. As far as the facts and circumstances of the instant case are concerned, the inconvenience said to be caused to the petitioner/wife to attend the Court at Jagtial cannot be a ground to grant the relief sought by her in this petition. Further, pendency of a criminal case and a D.V.C. case at Nizamabad cannot be a ground to transfer the subject O.P. The proceedings in the D.V.C. case, criminal case and the O.P., filed under Section 13 of the Act, are distinct and different. The parameters for adjudication of the aforesaid cases are different. If the aforesaid cases are disposed of

by different Courts, there will be no conflict of judgments/orders. Under these circumstances, this Court is of the view that the grounds raised by the petitioner/wife do not justify the relief sought by her in this petition. The Transfer Civil Miscellaneous Petition is devoid of merit and is liable to be dismissed.

8. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed.

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

February 13, 2020.
MD

Dr. SHAMEEM AKTHER, J

