

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Tr.C.M.P.No.261 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.61 of 2019 from the file of Senior Civil Judge, Huzurabad, to the file of Judge, Family Court, Mahabubnagar, for trial and disposal, along with F.O.P.No.64 of 2019 in accordance with law.

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

3. In the affidavit filed in support of the Transfer Civil Miscellaneous Petition, it is stated that the respondent/husband filed O.P.No.61 of 2019 on the file of Senior Civil Judge, Huzurabad, under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act'), seeking restitution of conjugal rights and the same is pending, whereas the petitioner/wife filed F.O.P.No.64 of 2019 on the file of Judge, Family Court, Mahabubnagar, under Section 13 (1) (ia) and (ib) of the Act, seeking divorce and the same is also pending. Therefore, in order to avoid multiplicity of proceedings and conflict of decisions, both the O.Ps. are required to be tried by the same Court. Further, the petitioner/wife is residing at Mahabubnagar along with her minor children, who are aged about 14 years and 11 years, respectively, and she is working as Secondary Grade Teacher in Upper Primary School, Gundlapotlapally, M.P. Rajpur, Mahabubnagar District. Therefore, it is difficult for her to attend the Court at Huzurabad, where the

subject O.P. is pending and which is more than 400 KMs. from her residence. Further, the parties lastly resided together at Mahabubnagar and they never lived within the jurisdiction of Huzurabad Court and, therefore, prayed to allow the Transfer Civil Miscellaneous Petition, as prayed for.

4. Admittedly, in both the O.Ps., parties are same. The contentions raised by both sides appear to be similar. Similar issues are required to be dealt in both the O.Ps. Under these circumstances, in order to avoid multiplicity of litigation and conflicting decisions, and for proper appreciation of the facts and circumstances of the case and to arrive at a correct conclusion, in the interest of justice, both the O.Ps. are required to be tried by one Court. F.O.P.No.64 of 2019 filed by the petitioner/wife is pending on the file of Judge, Family Court, Mahabubnagar, whereas O.P.No.61 of 2019 filed by the respondent/husband is pending on the file of Senior Civil Judge, Huzurabad. Under these circumstances, it is relevant to state that Section 19 of the Act 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 along with her minor children, who are aged about 14 years and 11 years, respectively. To attend the Court at Huzurabad, she has to travel around 400 kilometres along with her minor children or

leaving them at home. In both the circumstances, it causes hardship and inconvenience to the petitioner/wife. Further, the children of the petitioner are school going children and their absence to the school would also cause hindrance to their education. Further, the petitioner/wife is working as Secondary Grade Teacher in Upper Primary School, Gundlapotlapally, M.P. Rajpur, Mahabubnagar District. The convenience of the wife is of paramount importance. Therefore, if O.P.No.61 of 2019 is withdrawn from the file of Senior Civil Judge, Huzurabad, and transferred to the file of Judge, Family Court, Mahabubnagar, no inconvenience would be caused to the respondent/husband. Therefore, the prayer sought by the petitioner/wife can be granted.

5. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and O.P.No.61 of 2019 is withdrawn from the file of Senior Civil Judge, Huzurabad, and transferred to the file of Judge, Family Court, Mahabubnagar, for trial and disposal, along with F.O.P.No.64 of 2019 in accordance with law.

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

February 03, 2020.
MD

Dr. SHAMEEM AKTHER, J