

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Tr.C.M.P.No.274 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 withdraw H.M.O.P.No.51 of 2019 from the file of Senior Civil Judge, at Nirmal, and transfer to the file of Judge, Family Court, at Nizamabad, for trial and disposal in accordance with law.

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

3. Learned counsel for the petitioner/wife would contend that the petitioner/wife filed a complaint against the respondent/husband before the IV town Police station, Nizamabad which is registered as a case in Cr.No.235 of 2019 for the offences punishable under Sections 498-A of IPC and under Sections 3 and 4 of the Dowry Prohibition Act, 1961. The petitioner/wife also filed cases vide DVC No.56 of 2019 before the II Additional Judicial Magistrate of First Class, Nizamabad and M.C.No.45 of 2019 before the Judge, Family Court, Nizamabad against the respondent/husband and the same are pending. The respondent/husband, with an intention to avoid maintenance and to harass the petitioner/wife, filed H.M.O.P.No.51 of 2019 on the file of Senior Civil Judge, Nirmal, under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights, and the same is pending. The petitioner/wife is residing with her parents at Jandagally street, Nizamabad. She has also to take

care of her aged parents. The distance between Nizamabad to Nirmal is around 70 Kilometres. The petitioner/wife has no financial capacity to attend the Court at Nirmal in connection with the subject H.M.O.P. Therefore, it is very difficult for her to travel to Nirmal, where the subject H.M.O.P. is pending and ultimately, prayed to transfer H.M.O.P.No.51 of 2019 from the file of Senior Civil Judge, Nirmal to the file of Judge, Family Court, Nizamabad.

4. On the other hand, learned counsel for the respondent/ husband would contend that there are no tenable and justifiable grounds to grant relief to the petitioner/wife as prayed for and ultimately prayed to dismiss the petition.

5. 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 adverting 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

¹ 2018 (4) ALD 162

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

6. 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 filed cases against the respondent/husband at Nizamabad and she has also no financial capacity to travel from her place of residence to Nirmal to attend the proceedings in the Court at Nirmal and that it is inconvenient for her. While dealing with similar situations, this Court and the Hon'ble 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 Nirmal cannot be a ground to grant the relief sought by her in this petition. There are no other justifiable grounds in this petition. Under these circumstances, this Court is of the view that the grounds raised by the petitioner/wife do not justify the relief sought by the petitioner/wife in this petition. The Transfer Civil Miscellaneous Petition is devoid of merit and is liable to be dismissed.

7. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

February 10, 2020.
vvr

Dr. SHAMEEM AKTHER, J