

THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

TRANSFER CIVIL MISCELLANEOUS PETITION NO.246 OF 2022

ORDER :

This petition is filed by the petitioner/wife under Section 24 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') seeking to transfer O.P.No.49/2017 from the file of the Senior Civil Judge, Armoor, Nizamabad District, to the file of the Senior Civil Judge,Vemulawada, Rajanna Sircilla District.

2. As could be seen from the affidavit filed by the petitioner in support of her petition, it shows that the marriage of the petitioner was performed with the respondent on 18.06.2014 at Midyanagaram (Manala) Village, Bheemgal Mandal, Nizamabad District, and at the time of marriage, the parents of the petitioner gave a sum of Rs.1,00,000/- to the respondent towards dowry apart from other gold and house hold articles. After marriage, they lived happily for some time and thereafter, at the instance of his family members, the respondent started

harassing the petitioner both physically and mentally for want of additional dowry. The petitioner has been residing at the house of her parents, which is about 102 K.Ms. away from Armoor and she is apprehending danger to her life in the hand of the respondent. She has no source of income to travel all the way from Vemulawada to Armoor to attend the Court. Hence, sought for transfer of O.P.No.49/2017 to the file of the Senior Civil Judge, Vemulawada, Rajanna Siricilla.

3. Heard learned counsel appearing for both the parties.

4. Now, the point that would emerge for determination is

Whether the petitioner is entitled for the relief as prayed for ?

5. The petitioner in this petition is wife and her request is for transfer of the divorce O.P. filed by the respondent, who is none other than her husband. The petitioner sought for transfer of the petition on various grounds like financial difficulties, physical strain, etc. However, the respondent while opposing the petition has claimed that the petitioner already filed criminal cases and he is facing trial.

6. Learned counsel for the petitioner has submitted that in view of the Judgment of Hon'ble Apex Court in all the matrimonial matters priority shall be given to the request of the petitioner and her difficulties are paramount interest. However, there is no hard strike for such proposition yet times it will be difficult to the respondent too to attend the cases filed by the petitioner after getting his own divorce petition to the place of the petitioner.

7. I am not convinced with the arguments of the petitioner as to transfer the divorce petition as sought for. In view of the Judgment of erstwhile High Court of Andhra Pradesh while deciding a number of transfer civil miscellaneous petitions, this Court held that in all matrimonial matters, the parties need not appear for all the adjournments except insisting of personal appearance on the date of reconciliation under Hindu Marriage Act, 1955 or Family Court Act, 1984. It is only to settle the dispute either due to the intervention of the Court or mediators or family counseling centres, but not to cause inconvenience to either of the party. Therefore, the parties to the matrimonial matters bind to attend personally on

the date of reconciliation and on such appearance on the date of reconciliation proceedings is indispensable.

8. The Court further observed the object of transfer of case in course is only to permit the parties to cause justice and get fair chances. But the question is how to determine the inconvenience between the wife and the husband in a petition filed to exercise jurisdiction under Section 24 of the C.P.C. If Court finds that inconvenience causes to the petitioner/wife or to the respondent/husband, this Court may withdraw the pending matrimonial case from one Court to the another Court. If inconvenience alone is claimed by wife to want the transfer, the petition pending before any Court is not withdrawn and at convenience of the wife, Court has to direct balance between the parties of the matter and pass appropriate orders.

9. With regard to the financial difficulty, if really the Court feels that the wife is not in a position to bear the expenditure, since the respondent filed divorce petition being the husband, the respondent has to provide maintenance. The husband can suitably direct to bear the expenses of the petitioner if in case she required escort too.

In this case, the petitioner claims that she cannot afford the travel expenses. The request of the respondent is filed to grant divorce after allowing both the parties to adduce their respective oral and documentary evidence. Except for reconciliation proceedings, the parties need not appear before the Court where the divorce petition filed by the respondent is pending. Even if this case is transferred as per the request of the petitioner, the appearance of both the parties cannot be dispensed on the date which is scheduled for reconciliation of the parties. With regard to the remaining dates, there is absolutely no necessity for the petitioner, unless, she has any personal interest to appear. The wife can give suitable instructions to the counsel for cross-examination of the witnesses, who will be produced by the respondent. The petitioner/wife can file the evidence and affidavits of the witnesses whom she wants to examine in support of her claim. If the petitioner really feels that she has to contact those witnesses she can insist for the payment of expenses rather than seeking transfer of the case from the place where the respondent and petitioner resided before they departed each other.

10. Therefore, the objection raised by the petitioner with regard to the financial difficulty can be cured by giving a direction to the respondent to bear the expenditure. The trial Court can suitably instructed not to insist the appearance of the petitioner/wife in the divorce petition in any of the date of hearing. Therefore, this Court feels that there are no grounds to transfer the divorce petition filed by the respondent to the place where the petitioner is residing.

11. In the result, the petition is dismissed. However, the respondent is directed to bear the expenses of the petitioner and her witnesses whenever they attend before the Court where the divorce petition is pending.

The concerned Court may not insist the presence of the petitioner/wife in the divorce petition in all the dates of hearing.

Pending miscellaneous applications, if any, shall stand closed. No costs.

JUSTICE SAMBASIVA RAO NAIDU

DATED 05.12.2022

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