

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**TRANSFER CIVIL MISCELLANEOUS PETITION****No.434 of 2022****ORDER:**

I have heard learned Counsel Mr.Venkat Sunil Reddy, representing on behalf of Mr.T.V.S.Prabhakar Rao, learned Counsel for the petitioner. None appeared for the respondent, though notice served as per postal acknowledgment received by the Registry.

2. This is wife's petition under Section 24 of the Code of Civil Procedure (in short "CPC"), seeking transfer of HMOP No.102 of 2022 on the file of Senior Civil Judge's Court, Razole of East Godavari District to Senior Civil Judge's Court, Tadepalligudem of West Godavari District to try along with HMOP No.166 of 2022, on the ground that now she is residing in her parents' house at Tadepalligudem, which is at a distance of 75 kms from Razole town. The petitioner submits that she has filed complaint against the respondent, and his family members for the offences punishable under Section

498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act before the Station House Officer, Tadepalligudem Town Police Station, and she also filed HMOP No.166 of 2022 on the file of Senior Civil Judge's Court, Tadepalligudem of West Godavari District for restitution of conjugal rights. She prays to allow the petition.

3. Admittedly, the marriage between the petitioner and the respondent solemnized on 12.04.2017 in a function hall at Tadepalligudem of West Godavari District, and thereafter due to disputes arose between the parties, the respondent filed petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on 13.06.2022, seeking for divorce *vide* HMOP No.102 of 2022 before Senior Civil Judge's Court, Razole of East Godavari District, whereas the petitioner filed petition *vide* HMOP No.166 of 2022 on the file of Senior Civil Judge's Court, Tadepalligudem of West Godavari District on 28.09.2022 for restitution of conjugal rights, and she also lodged report before the Station House Officer, Tadepalligudem Town Police Station on 08.12.2022 against the respondent and his

family members. When the husband filed petition seeking for divorce, and the wife filed petition for restitution of conjugal rights, both the petitions have to be disposed of by same Court to avoid conflicting decisions if any, as per the *ratio* laid by the Hon'ble Apex Court in ***N.C.V.Aishwarya vs. A.S.Saravana Karthik***¹, wherein it is held at paras 9 and 10, which reads as under:-

"9. The cardinal principle for exercise of power under section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions".

¹ (2022 Live Law (SC) 627)

4. The respondent/husband not chosen to file any counter-affidavit, denying the allegations made against him in the affidavit of the petitioner, which are unchallenged. It is consistent view of the Hon'ble Apex Court that in matrimonial proceedings, the convenience of wife has to be considered than the inconvenience of husband. Now, admittedly the petitioner is residing in her parents' house at Tadepalligudem of West Godavari District, where the marriage between the parties also solemnized. The petition filed by the petitioner in HMOP No.166 of 2022 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights is also pending before Senior Civil Judge's Court, Tadepalligudem. Therefore, there are grounds to consider the request of the petitioner to transfer HMOP.No.102 of 2022 from Senior Civil Judge's Court, Razole of East Godavari District to Senior Civil Judge's Court, Tadepalligudem of West Godavari District.

5. In the result, this Transfer Civil Miscellaneous Petition is allowed. HMOP.No.102 of 2022 on the file of

Senior Civil Judge's Court, Razole of East Godavari District is hereby withdrawn and transferred to Senior Civil Judge's Court, Tadepalligudem of West Godavari District to try along with HMOP No.166 of 2022. The Senior Civil Judge's Court, Razole shall transmit the case records in HMOP.No.102 of 2022 after duly indexed to Senior Civil Judge's Court, Tadepalligudem as expeditiously as possible, within a period of two (02) weeks from the date of receipt of Orders of this Court in the present petition. Both parties shall appear before Senior Civil Judge's Court, Tadepalligudem on 31.10.2023 at 10.30 a.m. No order as to costs. Consequently, miscellaneous petitions, if any, shall stand closed. Interim Stay if any, granted shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date :05.10.2023

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THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

Tr.CMP No.434 of 2022

Date : 05.10.2023

Bsv