

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

Tr.C.M.P.No.4 of 2022

ORDER:

1. This Transfer Civil Miscellaneous Petition is filed by the petitioner/wife against the respondent/husband under Section 24 of the Civil Procedure Code, 1908 (for short 'CPC') for withdrawal of FCOP No.994 of 2021 pending on the file of the Judge, Family Court at City Civil Court Hyderabad and to transfer the same to the Judge, Family Court at Karimnagar and pass any such other orders as this Court deems fit and proper.

2. Notice of the respondent/husband is served. He filed a detailed counter denying the petition averments. Heard the learned counsel on both sides. The detailed submissions have been made by both the parties, which are more or less on pleaded lines. Therefore, it may not be necessary for this Court to refer in detail such submissions. However, the submissions so made have received due consideration of the Court.

3. The main averments of the affidavit filed in support of the petition that the petitioner is legally wedded wife of the respondent, their marriage was solemnized on 26.11.2017, they led happy marital life for some time and out of the wedlock, they were blessed with a male child. Thereafter, differences arouse between them, she was driven out of the house of the respondent and ever since then she is living with her parents. The respondent has filed OP No.994 of 2021 on the file of the Judge, Family Court at City Civil Court, Hyderabad for dissolution of marriage. It is causing lot of inconvenience to her to attend the Court at Hyderabad on each and every date of hearing along with her minor child by travelling a distance of 200 kms, accordingly prayed to withdraw FCOP No.994 of 2021 from the file of Family Court, City Civil Court, Hyderabad and to transfer the same to the Family Court at Karimnagar.

4. The respondent has filed a detailed counter. The main averments of the counter are that the distance between Karimnagar and Hyderabad is only 145 kms and not 200 kms as stated by the petitioner. It takes hardly

2½ hours by public transport to reach Hyderabad from Karimnagar. The petitioner did not appear before the Court on 17.11.2021 and the Court is directed the petitioner to bring the child on 30.10.2021 and also on 30.11.2021, but she has intentionally failed to produce the minor child. Though the matter was adjourned to 18.02.2022 for filing counter, she in utter disobeyed of the court directions, failed to produce the minor child at any point of time. He has taken a plea that he is ready and willing to pay the conveyance charges to the petitioner for attending the Court on each and every date of hearing and that the convenience of wife is not a ground for transfer of matrimonial dispute.

5. Section 24 of CPC deals with the general power of the High Court and District Courts for transfer of proceedings from one court to another court. The claim of the petitioner is that she is the legally wedded wife of the respondent and that out of wedlock, she gave a birth to a male child, she along with her male child are living with her parents. This aspect of the petitioner's case is not in

dispute by the respondent. His only contention is that the petitioner has failed to attend the proceedings before the Family Court regularly. She has also failed to produce the minor child, despite instructions from the Family Court, Hyderabad and that the respondent is ready to pay the conveyance charges of the petitioner for her attendance on each and every date of hearing. The learned counsel for the respondent/husband has relied on the principles relied on the following decisions:

- i) ***Kalpna Deviprakash Thakar v. Deviprakash Thakar***¹;
- ii) ***Anindita Das v. Srijit Das***²;
- iii) ***Teena Chhabra v. Manish Chhabra***³;
- iv) ***Kanagalakshmi v. A. Venkatesan***⁴;
- v) ***Priyanka Batra v. Manish Batra***⁵;
- vi) ***Gargi Konar v. Jagjeet Singh***⁶;
- vii) ***Sarita Singh alias Babli Baghel v. A.P. Baghel***⁷; and
- viii) ***Preeti Sharma v. Manjit Sharma*** (unreported judgment of Hon'ble Supreme Court in T.P. (Civil) No.117-118 of 2004;

¹ 1996 (11) SCC 96 = 1996 LawSuit (SC) 1785

² (2006) 9 SCC 197 = 2005 LawSuit (SC) 1148

³ (2004) 13 SCC 411 = 2004 LawSuit (SC) 1056

⁴ (2004) 13 SCC 405 = 2004 LawSuit (SC) 1067

⁵ (2005) 12 SCC 236 = 2005 LawSuit (SC) 1716

⁶ (2005) 11 SCC 446 = 2005 LawSuit (SC) 663

⁷ (2005) 12 SCC 376 = 2004 LawSuit (SC) 1497

I have given my thoughtful consideration to the principles laid in the above decisions.

6. Per contra, the learned counsel for the petitioner/wife has relied on the principles laid in **Rajani Kishor Pardeshi v. Kishor babulal Pardeshi**⁸ and argued that in such matrimonial disputes, the convenience of the wife is to be preferred over the convenience of the husband and the wife is entitled for the withdrawal of FCOP pending on the file of the Judge, Family Court at City Civil Court, Hyderabad and to transfer the same to the Judge, Family Court at Karimnagar where she is living.

7. The Hon'ble Supreme Court in another decision reported in **Sangeetha alias Shreya v. Prasant Vijay Wargiya**⁹ while dealing with the similar facts held that between husband and wife, the convenience of the wife must prevail particularly when the wife has a 2 ½ year-old child.

⁸ (2005) 12 SCC 237

⁹ (2004) 13 SCC 407

8. In ***Sumita Singh v. Kumar Sanjay and another***¹⁰ also in a case of divorce filed by the husband against the wife, the Apex Court held that it is the wife's convenience that must be looked into while considering the transfer petition.

9. Reverting back to the facts of the present case, it is not the case of the respondent/husband that the petitioner /wife is gainfully employed and that she is able to maintain herself and their minor son. It is also not the case of the respondent that he has been paying the maintenance either to his wife or to their minor child. In such facts and circumstances of the case, as the respondent/husband has not taken any steps ever since the birth of minor child either to look after him or to pay any maintenance, such offer of the husband that he is ready and willing to pay the conveyance charges to the wife for her appearance before the Judge, Family Court at Hyderabad on each and every date of hearing has no bona fides and not acceptable.

10. I have given my thoughtful consideration to the principles laid in the decision laid by the learned counsel

¹⁰ (2001) 10 SCC 41

for the respondent/husband. Though the Hon'ble Supreme Court in all the above decisions held that the convenience of wife can be compensated by the husband by paying conveyance charges, each case depends on its own facts and the principles laid in the above decisions are distinguishable with the facts of the present case. A close similarity between one case and another case itself is not sufficient to apply the principles laid in the above decisions, more so, in view of the fact that there are no bona fides in the offer made by the husband and it is not his case that he has either paid maintenance or other expenses to his minor child or to his wife at any point of time.

11. In such facts and circumstances of the case, the principles laid in the decisions 1 to 8 cited supra relied by the learned counsel for the respondent/husband are not helpful to the respondent as there are no bona fides in the offer made by the respondent/husband.

12. Whereas, in view of the principles laid by the Hon'ble Supreme Court of India in ***Rajani Kishor Pardeshi*** and

Sangeetha's cases (8th & 9th supra), between the convenience of husband and wife, the convenience of wife along with minor child will prevail and it has to be given preference over the convenience of the respondent/husband.

13. In that view of the matter and for the reasons stated above, I find justification in the request of the petitioner/wife for withdrawal of FCOP pending on the file of Judge, Family Court at Hyderabad and to transfer the same to the Judge, Family Court at Karimnagar.

14. In the result, the Transfer Civil Miscellaneous Petition is allowed. FCOP No.994 of 2021 pending on the file of the Judge, Family Court at City Civil Court, Hyderabad is ordered to be withdrawn and transferred to the Judge, Family Court at Karimnagar.

15. In the facts and circumstances of the case, considering the request of the learned counsel for the respondent, the learned Judge, Family Court at Karimnagar is directed to expedite the disposal of the matter, without granting unnecessary adjournments. The

learned Judge, Family Court at City Civil Court, Hyderabad, shall transmit the entire record in FCOP No.994 of 2021 duly indexed, within one month from the date of receipt of a copy of this order. However, there shall be no order as to costs.

As a sequel, interlocutory applications, if any pending shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 06.04.2022
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