

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER
TRANSFER CIVIL MISCELLANEOUS PETITION
Nos.239 OF 2019 & 24 of 2020

COMMON ORDER:

I have heard learned counsel for the petitioner Mr. G. Rama Gopal as well as learned counsel for the respondent Mr. N.A. Ramachandra Murthy.

2. This is wife's petition seeking transfer of F.C.O.P. No.46 of 2019 on the file of Family Court, Ongole, Prakasam District to Senior Civil Judge Court, Vizianagaram, to try along with H.M.O.P. No.83 of 2019 whereas Tr.C.M.P. No.24 of 2020 is filed by the petitioner/husband seeking transfer of H.M.O.P. No.83 of 2019 from Senior Civil Judge Court, Vijayawada to Family Court, Ongole to try along with F.C.O.P. No.46 of 2019. It is the contention of both sides that their marriage solemnised on 22.06.2007 as per Hindu rites and customs prevailing in their community at Ganivada village, L.Kota Mandal, Vizianagaram District and they blessed with a male child on 14.04.2012 now, aged 11 years staying with his mother. Both parties are making allegations and counter allegations against each other but the fact remains is that

husband filed petition seeking divorce, whereas wife filed petition for restitution of conjugal rights. Both cases are pending before different Courts. It is also not in dispute that both parties are working as Government Teachers as wife is working at Vizianagaram District, whereas husband is working at Prakasam District. As both are working as teachers, certainly it would be difficult for them to attend Courts frequently for each and every adjournment. After considering the fact that minor child is under care and protection of wife as she already filed petition for restitution of conjugal rights before Senior Civil Judge Court, Vizianagaram, both cases have to be disposed of by the same Court in view of the ratio laid down by the Hon'ble Apex Court in **N.C.V Aishwarya Vs. A.S. Saravana Karthik Sha**¹, wherein it is held at para-Nos. 9 & 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

¹ 2022 Live Law (SC)627

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 socioeconomic 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”.

3. In the present case also, after considering the contentions of both sides, this Court is of an opinion that F.C.O.P. No.46 of 2019 on the file of Family Court, Ongole, Prakasam District, can be transferred to Senior Civil Judge

Court, Vizianagaram, to try along with H.M.O.P. No.83 of 2019.

4. In the result, this Transfer Civil Miscellaneous Petition is allowed. F.C.O.P. No.46 of 2019 on the file of Family Court, Ongole, Prakasam District, is hereby withdrawn and transferred to Senior Civil Judge Court, Vizianagaram to try along with H.M.O.P. No.83 of 2019.

5. The learned Judge, Family Court, Ongole, Prakasam District, shall send the case records in F.C.O.P. No.46 of 2019, after duly indexed to Senior Civil Judge Court, Vizianagaram, as expeditiously as possible within two (02) weeks from the date of receipt of orders of this Court in the present petition.

6. The learned Senior Civil Judge, Vizianagaram, shall conduct counselling between the parties as per the procedure laid down under law and explore the possibility of amicable settlement of matrimonial disputes between the parties. The learned Senior Civil Judge, Vizianagaram, is hereby directed not to insist the physical presence of the respondent/husband for each and every adjournment of the case, if he engages an

advocate, he can insist his presence at the time of recording his evidence before the Court and he is also directed to dispose of both cases as expeditiously as possible within a period of one (01) year from the date of receipt of orders of this Court in the present petition.

7. Both parties shall appear before the Senior Civil Judge Court, Vizianagaram, on 18.08.2023 at 10.30 a.m. Since, Tr.C.M.P. No.239 of 2019 is allowed, the petition filed by the husband vide Tr.C.M.P. No.24 of 2020 is hereby dismissed. No order as to costs.

Consequently, miscellaneous petitions if any, stand closed. The Interim Stay, if any, granted, shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date: 18.07.2023
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