

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

TRANSFER CIVIL MISCELLANEOUS PETITION

NO.111 OF 2023

ORDER:

I have heard learned counsel Mr. Vijay Kumar, representing on behalf of Mr. A.S.C. Bose, learned counsel for the petitioner. None appeared for the respondent/husband.

2. This is wife's petition seeking transfer of H.M.O.P No.129 of 2022 on the file of Principal Senior Civil Judge, Guduwada of Krishna District to Additional Family Court, Visakhapatnam on the ground that she already filed F.C.O.P.No.2363 of 2022, F.C.O.P.No.2431 of 2022 and D.V.C.No.39 of 2022 which cases are pending before Additional Family Court, Visakhapatnam and Judicial Magistrate of First Class Court at Gajuwaka. The petitioner also stated that as she filed F.C.O.P.No.2363 of 2022 under Section 9 of Hindu Marriage Act for restitution of conjugal rights on 10.10.2022 and filed F.C.O.P.No.2431 of 2022 claiming maintenance on the file of Additional Family Court, Visakhapatnam, the respondent is contesting those petitions chosen to file separate petition seeking for restitution of conjugal rights in H.M.O.P.No.129 of 2022 on the file of Principal Senior

Civil Judge Court, Gudiwada. It is also the contention of the petitioner/wife that distance from Visakhapatnam to Gudiwada is more than 300 KM, she being woman not in a position to travel to put forth her defence in a petition filed by her husband for restitution of conjugal rights.

3. The respondent not chosen to contest the case by filing counter-affidavit denying the averments made in the affidavit of the petitioner. The fact remains is that marriage between the petitioner and respondent was solemnized on 21.08.2021 in a function hall at Gudiwada of Krishna District, as per Hindu rites and customs prevailing in their community.

4. Admittedly, the petitioner/wife filed petition for restitution of conjugal rights, a petition for claiming maintenance before Family Court and also filed petition under Protection of Women from Domestic Violence Act before Judicial Magistrate of First Class, Gajuwaka. Two similar petitions are filed by the petitioner and the respondent under Section 9 of Hindu Marriage Act for restitution of conjugal rights, which have to be disposed of by the same Court to avoid conflicting judgments, if any.

5. It is consistent view of the Hon'ble Apex Court that in respect of matrimonial proceedings the convenience of the wife has to be considered rather than inconvenience of the husband. To avoid conflicting judgments, if any and after considering the reasons stated in the affidavit of the petitioner, this Court is of an opinion that there are grounds to transfer of H.M.O.P.No.129 of 2022 from Principal Senior Civil Judged Court, Gudiwada of Krishna District to Additional Family Court, Visakhapatnam to try along with F.C.O.P.No.2363 of 2022.

6. In the result, this transfer civil miscellaneous petition is allowed. The H.M.O.P.No.129 of 2022 on the file of Principal Senior Civil Judge Court, Gudiwada of Krishna District is hereby withdrawn and transferred to the Additional Family Court, Visakhapatnam to try along with F.C.O.P.No.2363 of 2022. The learned Principal Senior Civil Judge, Gudiwada of Krishna District shall transmit the case records in H.M.O.P.No.129 of 2022 duly indexed as expeditiously as possible to the Additional Family Court, Visakhapatnam within a period of two weeks from the date of receipt of orders of this Court.

7. Both parties shall appear before Additional Family Court, Visakhapatnam on 25.07.2023 at 10.30 AM. No order as to costs.

Consequently, miscellaneous petitions, if any, shall stand closed. The interim stay granted if any, shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date: 10.07.2023
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211**THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER****TRANSFER CIVIL MISCELLANEOUS PETITION****NO.111 OF 2023**

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