

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**FRIDAY, THE TWENTY EIGHTH DAY OF JUNE  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HONOURABLE SRI JUSTICE B SYAMSUNDER**

**TRANS. CIVIL MISC.PETITION NO: 307 OF 2023**



**Between:**

Cheedella Naga Venkata Kanakadurga, Guna Sangeetha Lakshmi, W/o.  
Cheedella Suresh Babu, aged 44 years, Housewife, R/o.D.No. 4-4-15/8,  
Grandhi Madhava Ramadevi Nilayam, Near Peruguchettu center, Agraharam,  
Eluru, Eluru District. (Erst while West Godavari District)

**...PETITIONER**

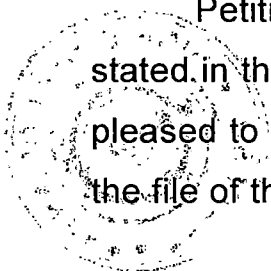
**AND**

Cheedella Suresh Babu, S/o. Veerajnjaneyulu, aged 47 years, R/o. D.  
No. 1-3/4-176A, Vadderlavari Street, Vidyadharapuram, Vijayawada,  
N.T.R.District

**...RESPONDENT**

Petition Under Section 24 of the C.P.C. Praying that in the circumstances stated in the affidavit filed there with, the High Court may be pleased to order withdrawal of F.C.O.P 988 of 2019 on the file of the court of Learned Principal Judge, Family Court, Vijayawada, Krishna District and transfer the same for trail and disposal to the court of learned Judge, Family Court, Eluru, West Godavari District.

**IA NO: 1 OF 2023**



Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in F.C.O.P. 988 of 2019 on the file of the court of Learned Principal Judge, Family Court, Vijayawada.

**Counsel for the Petitioner : SRI SIVA SANKARA RAO BORRA**

**Counsel for the Respondent : SRI GHANTA SRIDHAR**

**The Court made the following:**

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

TRANSFER CIVIL MISCELLANEOUS PETITION

No.307 of 2023

ORDER:

I have heard learned Counsel for the petitioner Mr.Siva Sankara Rao, Borra as well as learned Counsel Mr.P.Prabhakar, representing on behalf of Mr.Ghanta Sridhar, learned Counsel for the respondent.

2. This is wife's petition under Section 24 of the Code of Civil Procedure (in short "CPC"), seeking transfer of FCOP.No.988 of 2019 on the file of Principal Family Court, Vijayawada of Krishna District to Family Court, Eluru of West Godavari District, on the ground that she filed FCOP No.169 of 2023 on the file of Family Court, Eluru of West Godavari District for restitution of conjugal rights, and also filed MC No.168 fo 2023 on the file of Family Court, Eluru under Section 125 Cr.P.C claiming maintenance from the respondent and lodged a report before the Station House Officer, Eluru PS, which is subject matter in CC No.396 of 2023 on the file of Principal Junior Civil Judge's Court, Eluru, whereas the respondent/husband filed FCOP No.988 of 2019 on the file of Principal Family Court, Vijayawada under Section 13

(i)(ia)(ib) of Hindu Marriage Act, seeking for divorce. The petitioner submits that she is now living in her parents' house at Eluru, and she has to travel 120 kms from Eluru to Vijayawada to defend divorce petition filed by her husband, and she being a woman not in a position to bear travel and legal expenses to prosecute divorce petition filed by her husband. She prays to allow the petition.

3. The respondent filed counter-affidavit, denying the averments in the affidavit of the petitioner. It is the contention of the respondent that he filed petition in FCOP No.988 of 2019 on the file of Principal Family Court, Vijayawada, wherein at the first instance, the petitioner engaged a Counsel, but after that remained *exparte*, and then filed petition to set-aside the *exparte* Order, which was allowed, and thereafter the petition is coming up for enquiry, wherein he also filed his chief-examination affidavit as PW.1 and documents are also marked as Exs.P1 to P3 and the matter was posted to 19.07.2023 for cross-examination. The respondent submits that when the matter is coming-up for cross-examination, the petitioner requested the Court that she intended to engage another Counsel, and thereafter she filed petition for restitution of conjugal rights before

Family Court, Eluru, and then filed this petition, seeking for transfer to evade to cross-examine him in FCOP No.988 of 2019 pending on the file of Principal Family Court, Vijayawada. It is also the contention of the respondent that when FCOP No.988 of 2019 on the file of Principal Family Court, Vijayawada is pending, the petitioner has not filed any petition, but she has chosen to file petition, seeking for restitution of conjugal rights four years after filing of the divorce petition as a counter-blast, and lodged a false report, wherein she managed the Police got it filed charge sheet on 22.06.2023 within a span of one month. The respondent submits that his younger sister is mentally retorted, and he is looking after his old aged mother, who is bed-ridden. He submits that the petitioner in order to invoke Section 24 of CPC, filed FCOP No.169 of 2023 and MC No.168 of 2023 before Family Court, Eluru though she is not interested to lead marital life and not entitled to claim any maintenance, having deserted him seven years prior to filing of the petition. He prays to dismiss the petition.

4. The learned Counsel, representing both sides have submitted the arguments at length, supporting their respective contentions, and after arguing for some time and when this Court asked about delay in filing transfer petition when the respondent

filed divorce petition in the year 2019 itself, wherein also enquiry commenced, the learned Counsel for the petitioner on instructions from the petitioner would submit that the petitioner has no objection for transfer of FCOP No.169 of 2023 pending on the file of Family Court, Eluru of West Godavari District to Principal Family Court, Vijayawada to try along with FCOP No.988 of 2019. Both sides pray to pass necessary orders in view of powers conferred to this Court under Section 24 of CPC.

5. Now the point that emerges for consideration of this Court is:-

***"Whether FCOP No.988 of 2019 on the file of Principal Family Court, Vijayawada can be transferred to Family Court, Eluru of West Godavari District to try along with FCOP No.169 of 2023, or whether FCOP No.169 of 2023 pending on the file of Family Court, Eluru can be transferred Principal Family Court, Vijayawada to try along with FCOP No.988 of 2019?"***

6. Before going to the merits of the case, it would be beneficial to quote Section 24 of CPC, which reads as under:

**"24. General power of transfer and withdrawal:-**

- (1) *On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-*

- (a) *transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or*
- (b) *withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and*
  - (i) *try or dispose of the same; or*
  - (ii) *transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
  - (iii) *retransfer the same for trial or disposal to the Court from which it was withdrawn.*
- (2) *Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.*
- (3) *For the purpose of this section,-*
  - (a) *Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;*
  - (b) *"proceeding" includes a proceeding for the execution of a decree or order.*
- (4) *The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.*
- (5) *A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it".*

7. A perusal of above referred provision, which makes it clear that transfer of cases can be ordered by this Court at the instance of any of the party, or of its own motion if it is expedient and for

interest of justice to avoid conflicting decisions. It is settled law that when two matrimonial matters are pending in two different Courts, which have to be disposed of by the same Court to avoid conflicting decisions (*vide ratio* laid down by the Hon'ble Apex Court in ***N.C.V.Aishwarya vs. A.S.Saravana Karthik in 2022 Live Law (SC) 627***)

8. Admittedly, the marriage of the petitioner with the respondent solemnized on 27.04.2016 in a function hall at Eluru, as per Hindu rites and customs prevailing in their community. After that both have lastly resided at Vijayawada, but due to matrimonial disputes, now the petitioner is residing in her parents' house at Eluru, whereas the respondent/husband is residing at Vijayawada. At the first instance, the respondent/husband filed FCOP No.988 of 2019 under Section 13(i)(ia)(ib) of Hindu Marriage Act, seeking for divorce on the ground of cruelty and desertion, wherein the petitioner made her appearance, filed counter and enquiry also commenced in the said petition. But the petitioner has chosen to file petition in FCOP No.169 of 2023 on the file of Family Court, Eluru under Section 9 of Hindu Marriage Act for restitution of conjugal rights, and after that enquiry in FCOP No.988 of 2019 has been commenced. The distance between



Eluru town and Vijayawada city is not 120 kms, but it is only 60 kms as per the contentions of both sides. As enquiry in FCOP No.988 of 2019 filed by the respondent already commenced, it is not desirable to transfer the said case to Family Court, Eluru (*vide ratio* laid down by the Hon'ble Apex Court in ***Abhilasha Gupta vs. Harimohan Gupta in (2021) 09 SC CK 0125 in Tr.Petition (Civil) No.1027 of 2021, dated 24.09.2021***)

9. After considering the contentions of both sides, to avoid conflicting decisions in matrimonial proceedings, and in view of powers conferred on this Court as per Section 24 of CPC, this Court is of an opinion that FCOP.No.169 of 2023 on the file of Family Court, Eluru can be transferred to Principal Family Court, Vijayawada to try along with FCOP No.988 of 2019.

10. In view of discussion referred *supra*, there are no grounds to consider the request of the petitioner to transfer FCOP.No.988 of 2019 on the file of Principal Family Court, Vijayawada to Family Court, Eluru instead FCOP.No.169 of 2023 on the file of Family Court, Eluru can be transferred to Principal Family Court, Vijayawada to try along with FCOP No.988 of 2019.

11. In the result, this Transfer Civil Miscellaneous Petition is dismissed. FCOP.No.169 of 2023 on the file of Family Court,

Eluru of West Godavari District is hereby withdrawn and transferred to Principal Family Court, Vijayawada to try along with FCOP No.988 of 2019. The learned Judge, Family Court, Eluru shall transmit the case records in FCOP.No.169 of 2023 after duly indexed to Principal Family Court, Vijayawada 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 Principal Family Court, Vijayawada on 25.07.2024 at 10.30 a.m. The learned Judge, Principal Family Court, Vijayawada shall dispose of FCOP No.988 of 2019 and petition filed by the petitioner under Section 9 of Hindu Marriage Act as expeditiously as possible, within a period of six (06) months from the date of receipt of Orders of this Court in the present petition. The learned Judge, Principal Family Court, Vijayawada shall not insist physical presence of the petitioner for each and every adjournment in both petitions, if she engages a Counsel, and he can insist her presence, as and when required or at the time of recording her evidence before the Court. The respondent/husband shall pay a sum of Rs.500/- (Rupees Five hundred only) to the petitioner/wife whenever she required to attend before Principal Family Court, Vijayawada in the said petitions. The learned Judge, Principal Family Court, Vijayawada

shall ensure that such payment is made to the petitioner on every occasion of her appearance before the Court. No order as to costs. Consequently, miscellaneous petitions, if any, shall stand closed. Interim Stay if any, granted shall stand vacated.

Sd/- SHAIK MOHD. RAFI  
ASSISTANT REGISTRAR

//TRUE COPY//

  
SECTION OFFICER

To,

1. The Judge, Family Court, Eluru, West Godavari District.
2. The Principal Judge, Family Court, Vijayawada, Krishna District.
3. One CC to Sri Siva Sankara Rao Borra, Advocate [OPUC]
4. One CC to Sri Ghanta Sridhar, Advocate [OPUC]
5. Cheedella Naga Venkata Kanakadurga, Guna Sangeetha Lakshmi,  
W/o. Cheedella Suresh Babu, aged 44 years, Housewife, R/o.D.No. 4-  
4-15/8, Grandhi Madhava Ramadevi Nilayam, Near Peruguchettu  
center, Agraharam, Eluru, Eluru District
6. Cheedella Suresh Babu, S/o. Veerajnjaneyulu, aged 47 years, R/o. D.  
No. 1-3/4-176A, Vadderlavari Street, Vidyadharapuram, Vijayawada,  
N.T.R.District
7. Three CD Copies

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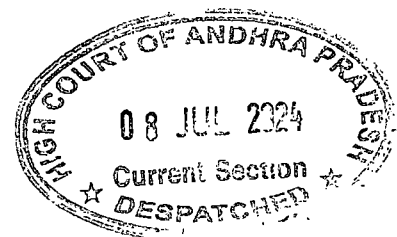
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**HIGH COURT**

**DATED: 28/06/2024**

**ORDER**

**Tr.CMP No.307 of 2023**



**DISMISSING THE Tr.CMP WITHOUT COSTS**