HON'BLE SRI JUSTICE S. RAVI KUMAR

TRANSFER C.M.P.No.260 of 2014

ORDER :

This petition is filed to withdraw O.P.No.99 of 2014 from the file of Family Court, Ranga Reddy District, and transfer the same to Additional Family Court, Visakhapatnam, where O.P.No.173 of 2014 filed by wife and her daughter is pending.

2. Wife filed her affidavit and according to her affidavit, she filed O.P.No.173 of 2014 against respondent-husband herein claiming maintenance and the same is pending before Additional Family Court, Visakhapatnam and respondent filed O.P.No.99 of 2014 for restitution of conjugal rights. She further stated that for the last three years, she along with her daughter is living separately and she is staying with her parents. According to her affidavit, O.P. filed by husband is a counter blast for O.P.No.173 of 2014 and she is working in State Bank of India, Visakhapatnam, and it is difficult for her to attend the Court proceedings at Ranga Reddy to defend O.P.No.99 of 2014. She further contended that there is a life threat to her at Hyderabad and considering these aspects and also considering her convenience, she prayed for transfer of O.P.No.99 of 2014 from Family Court, Ranga Reddy, to Additional Family Court, Visakhapatnam, to be tried along with O.P.No.173 of 2014.

3. Respondent-husband filed counter disputing the affidavit averments of petitioner and he contended that petitioner received notices in O.P.No.99 of 2014, but failed to appear before the Family Court, Ranga Reddy District, and in the result, she was set *ex parte* and an *ex parte* decree was passed on 02.04.2014 and as a counter blast, she filed M.C. at Visakhapatnam. He further contended that petitioner filed I.A.No.373 of 2014 for setting aside the *ex parte* decree in O.P.No.99 of 2014 on 15.04.2014 and the same is pending without any progress due to stay granted in the transfer C.M.P. He further contended that as the transfer C.M.P. is field after passing *ex parte* decree in O.P.No.99 of 2014 on 02.04.2014, the same is not maintainable and liable to be dismissed.

4. Heard both sides.

5. Both side advocates submitted their arguments supporting respective contentions of their parties. The main objection of respondent's counsel is that by the date of filing of transfer C.M.P., O.P.No.99 of 2014 was not pending and by suppressing the same, with false averments, this transfer C.M.P. is filed, therefore, the transfer C.M.P. has to be dismissed.

6. I have perused the material papers filed along with transfer C.M.P. and counter. As seen from the affidavit of petitioner-wife, her affidavit is dated 16.03.2014, which is filed in support of the transfer C.M.P. Admittedly, by 16.03.2014, O.P.No.99 of 2014 was pending and *ex parte*

decree was passed on 02.04.2014. Therefore, the contention of respondent's counsel that the averment in the counter affidavit are not correct as to the pendency of O.P., cannot be accepted, since on the date of giving affidavit, O.P.No.99 of 2014 was pending.

7. Wife sought transfer of O.P. filed by husband on two grounds, *firstly,* that a connected O.P.No.173 of 2014 is pending before Additional Family Court, Visakhapatnam, filed for maintenance and both the cases have to be tried by one Court. *Secondly,* she sought transfer of O.P. on the ground of her convenience. In the counter, except taking objection with regard to the fact that O.P.No.99 of 2014 was not pending as on the date of filing of transfer C.M.P., no other tenable objection is taken and all the objections raised in the counter are in respect of merits of the maintenance O.P. filed by wife and those contentions cannot be decided in a transfer C.M.P.

8. Therefore, considering the convenience of wife and also the fact that both O.Ps. i.e., O.P. for restitution of conjugal rights and O.P. for maintenance have to be tried by one Court to avoid conflicting decisions and findings, I feel that request of wife can be considered. Accordingly, O.P.No.99 of 2014 is withdrawn from Family Court, Ranga Reddy District, and transferred to Additional Family Court, Visakhapatnam, to be tried along with O.P.No.173 of 2014.

9. Accordingly, petition is ordered. No costs.

10. Miscellaneous Petitions, if any, shall stand closed.

S. RAVI KUMAR, J

30th January 2015.

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