

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.511 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure, 1908, requesting to withdraw O.P.No.253 of 2016 on the file of the Additional Family Court, City Civil Court, Hyderabad, and transfer the same to the Family Court, Guntur District, for trial and disposal in accordance with the procedure established by law.

2. Heard the submissions of Smt. Marella Radha, learned counsel for the petitioner-wife, and Sri E. Poornachander Rao, learned counsel for the respondent-husband. I have perused the material record.

3. The case of the wife, which is relevant for consideration, in brief, is as follows: 'After matrimonial disputes and estrangement between the spouses, the respondent-husband went away to U.S.A and is staying there. All of a sudden, he filed O.P.No.253 of 2016 under the provisions of the Indian Divorce Act, 1869, before the file of the Additional Family Court, City Civil Court, Hyderabad, for dissolution of marriage. She is resisting the said petition. On account of the death of her father, she is presently residing with her aged mother at Guntur, which is at a distance of 280 kilometers from Hyderabad. She is having a girl child aged two years. She is a house wife. On account of her inconvenience, incapacity, weak financial position and lack of assistance, she is unable to undertake travel from Guntur to Hyderabad to attend the Court proceedings in the City Civil Court, Hyderabad. Therefore, she is constrained to file the petition seeking transfer.'

4. Per contra, the case of the husband is that in view of the fact that he is residing at USA, he appointed his sister as his GPA and is prosecuting his case through her; his sister, being a lady, will not be in a position to attend the Court proceedings at Guntur and it is unsafe for his family members to go to Guntur and

prosecute the case, in the event the case is transferred to Guntur; as the young daughter is frequently falling ill, in the pending proceeding before the City Civil Court, Hyderabad, an interlocutory application was filed to produce the child before Rainbow hospital, Hyderabad, for providing proper medical aid; another application was also filed for the custody of the child; the transfer application is frivolous and is liable for dismissal.

5. I have given earnest consideration to the facts and the submissions.

6. Having due regard to the submissions and the vital fact that the wife is having custody of a two year old daughter and the further fact that the husband is not personally prosecuting his case and is only prosecuting his case through a GPA holder and, therefore, it makes no difference for the husband whether the case is tried and disposed of by a Court at Hyderabad or the Court at Guntur, this Court is of the considered view that the wife's convenience is to be preferred. The view that the convenience of the wife must be looked into and considered in a case of this nature finds support from the ratios in the decisions in **Sangeeta @ Shreya V/s Prasant Vijay Wargiya**¹ and **Lalita V/s Kulwinder Kumar**². In the decision in **Rajani Kishor Pardeshi V/s Kishor Babulal Pardeshi**³ despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition. In **Sumita Singh V/s Kumar Sanjay and Another**⁴ though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at. As per the preponderance of precedential

¹ 2004 (13) SCC 407

² (2007) 15 SCC 667

³ (2005) 12 SCC 237

⁴ (2010) 10 SCC 41

authority and the circumstances indicated, the wife's convenience is to be preferred and shall prevail.

7. In the result, the Tr.C.M.P is allowed and O.P.No.253 of 2016 is withdrawn from the file of the Additional Family Court, City Civil Court, Hyderabad, and is transferred to the file of the Family Court, Guntur District, for trial and disposal in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

20th October, 2016
Vjl

