

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.713 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.215 of 2016 on the file of the Family Court, Vijayawada, and transfer the same to the Court of the learned Senior Civil Judge, Narasaraopet, Guntur District, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri Y.Narapa Reddy, the learned counsel for the petitioner-wife. I have perused the material record. Though the respondent is served with notice, none appears.

3. Shorn of unnecessary details the case of the petitioner-wife is as follows: 'She is 26 years of age. She is a house wife. She is having custody of two minor children aged 8 years and 6 years respectively. Presently she and her children are staying along with her parents at Narasaraopet, Guntur District. She has no income or sources of income. Due to her financial weakness and incapacity to undertake travel, more particularly in the light of the fact that she is having custody of two minor children, she is constrained to file this petition to transfer the O.P.No.215 of 2016 filed by the respondent-husband for restitution of conjugal rights from the file of the Family Court, Vijayawada, to the Court of the learned Senior Civil Judge, Narasaraopet, Guntur District.

4. The learned counsel for the petitioner-wife, while reiterating the above submissions, seeks to allow this transfer petition as prayed for.

5. As stated *supra*, the respondent-husband, though served with the notice, has not entered appearance and is not resisting this application.

6. The financial weakness, inconvenience, incapacity of the wife to undertake travel from Narasaraopet, Guntur District to Family Court, Vijayawada, where the OP filed by the husband is pending, require due consideration more particularly in the light of the fact that she is having custody of two young children. As per the preponderance of the precedential authority the wife's convenience is to be preferred and shall prevail, in the absence of any special circumstances warranting taking a different view. The husband having not entered appearance and having remained *ex parte* has not shown any special circumstances to take a different view. This Court is thus satisfied that sufficient cause is shown for granting the relief.

7. In the result, this petition is allowed and O.P.No.215 of 2016 is withdrawn from the file of the Family Court, Vijayawada, and is transferred to the Court of the learned Senior Civil Judge, Narasaraopet, Guntur District, for trial and disposal in accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

08th December, 2016
Bvv

M. Seetharama Murthi, J