

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.429 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure requesting to withdraw O.P. No.2086 of 2015 on the file of the Family Court, Panga Reddy District at L.B.Nagar, and transfer the same to the file of the Court of the learned III Additional District Judge, Vizianagaram, for trial and disposal in accordance with the procedure established by law.

2. Notice before admission came to be ordered on 15.07.2016. When the matter came up on 20.10.2016, the learned counsel for the petitioner submitted that the notices sent by registered post with acknowledgment due were returned 'unclaimed'. Hence, it is deemed that the respondent has been duly served. Despite service of notice, the respondent does not appear and oppose the wife's petition.

3. The case of the wife, which is relevant for consideration, in brief, is as follows: "The petitioner was ill treated by her husband and his family members. During her third month pregnancy, her mother-in-law took her to Visakhapatnam and left her at the railway station. Having no other alternative, she was forced to take shelter in the house of her parents. The efforts for reconciliation through elders did not fructify. Though she was blessed with a son on 25.05.2014, the respondent and his family members did not even bother to come and see the child. She has no means of livelihood and her parents are also not financially sound. Her father was suffering with paralysis. F.C.M.C.No.49 of 2014 on the file of the Court of the learned III Additional District Judge, Vizianagaram, filed by her was disposed of on 27.06.2016 by awarding Rs.15,000/- and Rs.10,000/- each per month to her and her child respectively. She had also filed a DV Case under the provisions of the Protection of Women from Domestic Violence Act, 2005. As a counter blast to

the cases filed by her, the respondent-husband filed O.P.No.2086 of 2015 under Section 13(i)(ia)(if) of the Hindu Marriage Act, 2005, on the file of the Judge, Family Court, at L.B.Nagar, Ranga Reddy District, seeking divorce. She has no means to engage an advocate at Hyderabad. As she is having a small child, she cannot travel from Vizianagaram to Hyderabad to contest the case filed by the husband.”

4. The respondent is not resisting the wife’s petition.

5. On consideration of the relevant facts and the convenience of the wife and her child, this Court is of the view that sufficient case is made out by the petitioner-wife for granting the relief. The view of this Court that the convenience of the wife has to be looked into finds support from the ratio in the decision in Lalita V/s Kulwinder Kumar¹. In the decision in Rajani Kishor Pardeshi V/s Kishor Babulal Pardeshi², 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 Another³, 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. In Sangeeta @Shreya V/s Prasant Vijay Wargiya⁴, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the

¹ (2007) 15 SCC 667

² (2005) 12 SCC 237

³ (2001) 10 SCC 41

⁴ (2004) 13 SCC 407

husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan. In the facts and the circumstances of the instant case, as there are no special circumstances warranting taking a different view, the convenience of the wife is to be preferred over the convenience of the husband. The legal position and the circumstances indicated are sufficient to allow the wife's petition.

5. In the result, the Tr.C.M.P is allowed and F.C.O.P. No.2086 of 2015 is withdrawn from the file of the Judge, Family Court, Ranga Reddy District, and is transferred to the file of the Family Court-cum-the Court of the learned III Additional District Judge, Vizianagaram, 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

24th October, 2016
RAR