

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.570 of 2016

ORDER:

This is a wife's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw H.M.O.P.No.1426 of 2012 from the file of the Family Court, Hyderabad, and transfer the same to the Family Court, Visakhapatnam, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Smt. *R.V.Indira Kumari*, the learned counsel for the petitioner-wife. I have perused the material record. Notice sent to the respondent-husband was returned with the postal endorsement 'refused'. The respondent-husband, having not entered appearance, remained *ex parte*

3. Shorn of unnecessary details, the case of the petitioner-wife is as follows: 'She is a house wife aged 33 years. She is having custody of a minor child aged seven years. She is presently staying with her parents. She has no income or sources of income. Earlier, when she was staying with her parents at Hyderabad, she filed, before the Family Court, Hyderabad, the subject H.M.O.P.No.1426 of 2012 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. The respondent-husband filed O.P.No.464 of 2010 before the Family Court, Visakhapatnam. The respondent-husband filed a transfer petition before this Court seeking transfer of his said OP from the Court at Visakhapatnam to the Court at Hyderabad in which her OP for

restitution of conjugal rights is pending. However, after the said transfer petition was allowed, the respondent-husband allowed the OP No.464 of 2010 to be dismissed for default. Therefore, the order in the transfer OP could not be implemented. Now, her father is transferred from Hyderabad to Visakhapatnam. It is his last posting, as he would shortly be attaining age of superannuation. She moved along with his father from Hyderabad to Visakhapatnam. The OP for restitution of conjugal rights was filed in the year 2012 whereas the counter in that OP was filed in the year 2016. In the circumstances she is placed and as she is having custody of a minor child and due to her financial weakness and incapacity to undertake travel from Visakhapatnam to Hyderabad, she is constrained to file the present petition for transfer of H.M.O.P.No.1426 of 2012 from the file of the Family Court, Hyderabad, to the Family Court, Visakhapatnam.”

4. The respondent/husband having not entered appearance is not resisting the request of the petitioner/wife. The financial weakness, inconvenience, incapacity of the wife to undertake travel from Visakhapatnam to Hyderabad, where the OP filed by her is pending, require due consideration more particularly in the light of the fact that she is having custody of a child aged 7 years.

5. Having given earnest consideration to the facts and submissions, this Court is satisfied that sufficient cause is shown for granting the relief.

6. In the result, this petition is allowed and H.M.O.P.No.1426 of 2012 is withdrawn from the file of the Family Court, Hyderabad, and is transferred to the Family Court, Visakhapatnam, 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.

29th December, 2016
Bvv

M. Seetharama Murthi, J

