

HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.382 of 2016

ORDER:

This Tr.CMP under Section 24 of the Code of Civil Procedure, 1908, is filed by the respondent in FCOP.No.14 of 2015 on the file of the Family Court, Vizianagaram, requesting to withdraw the said OP from the file of the said Court and transfer the same to any other Court at Vizianagaram or any other Court in the nearby Districts of Vizianagaram or Srikakulam for disposal in strict accordance with the procedure established by law. FCOP.No.14 of 2015 is filed by the respondent herein under Section 125 CrPC for award of maintenance.

2. I have heard the submissions of Sri K. Subrahmanyam, learned counsel appearing for petitioner-husband and Sri T. Nageswara Rao, learned counsel appearing for the respondent-wife. I have perused the material record.

3. Shorn of un-necessary details, the grievance of the petitioner-husband is that while enquiry in the subject FCOP is in progress, the learned Presiding Officer of the Court made certain utterances/observations which led the petitioner-husband to entertain apprehension that if the same Judge continues to hear and dispose of the matter, he may not get fair justice in the matter. Contending so, the present Tr.CMP is filed.

4. The learned counsel for the respondent-wife while orally resisting the petition would submit that no Presiding Officer will generally make such utterances against one of the parties to the litigation and that in-fact no such observations/ utterances were made by the Officer and that the FCOP is filed for award of maintenance and that cases of such nature have to be disposed of expeditiously and that the wife's convenience is to be preferred and that on the ground that the Officer made certain observations during course of enquiry, transfer application cannot be entertained and considered and that a number of hearings had already taken place and that the matter is now coming for the

further evidence on the respondent's side and that therefore, the Tr.CMP is liable to be dismissed.

5. I have given detailed and thoughtful consideration to the facts and submissions. Without going into the correctness or otherwise of the allegations made in the petition, what is to be noted is that in any matter where allegations are made against the Officer and aspersions are cast on the conduct of the Judicial Officer, whether the said allegations are true or not, the Judicial Officer would not be inclined to take up such matter for disposal on merits and would always make a request to this Court, while denying the allegations and aspersions cast against him, to transfer the case from his Court in the interests of parties and also to meet the ends of justice. However, on that ground if this transfer petition is to be ordered the hardship caused to the wife has to be offset by imposing certain conditions as in case this matter is transferred to a Family Court of a neighboring District she has to again meet the legal expenses, fee of the advocate besides her travel and incidental expenses.

6. Viewed thus, this Court finds that this transfer petition can be ordered without going into the correctness of the allegations made in the petition, however, after imposing certain conditions, keeping in view the interests of the respondent-wife.

7. In the result, the Transfer CMP is allowed without costs and the FCOP.No.14 of 2015 on the file of the Family Court, Vizianagaram, is withdrawn from the file of the said Court and is transferred to the Family Court, Srikakulam, for disposal in strict accordance with the procedure established by law, subject to the condition that the petitioner-husband shall deposit Rs.25,000/- to the credit of the aforesaid OP within one month from today; failing such compliance, this transfer CMP shall stand dismissed and the Original Court, i.e., the Family Court, Vizianagaram, shall decide the OP on

merits. On such deposit, the respondent-wife is permitted to withdraw the said amount without furnishing any security. On such compliance of the direction in this order, the transferor Court shall transmit the duly indexed record as expeditiously as possible to the transferee Court. It is made also made clear that the transferee Court shall proceed with the case from the present stage as on the date of the transmission of the record by the transferor Court.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

24th November 2016
Note: Issue CC by 01.12.2016.
(B/ o)
Vjl

