

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.539 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.285 of 2016 from the file of the Family Court, Secunderabad, and transfer the same to the Family Court, Rajahmundry, East Godavari District, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri *M.Phani Kumar*, the learned counsel for the petitioner-wife. I have perused the material record.

2.1 As per the submissions, the respondent-husband avoided to receive notices sent despite intimation and therefore, the postal cover was returned with the endorsement 'unclaimed' and that the notice sent to the counsel on record for the respondent herein in the proceedings before the Court below was duly received and that the postal acknowledgement along with a memo is filed into the Court. Despite such service of notices, the respondent did not enter appearance.

3. Shorn of unnecessary details, the case of the petitioner-wife is as follows: 'She is 30 years of age. After separation of the spouses, she is living with her parents at Giddangi village, Rajavommangi Mandal of East Godavari District. She has no income or sources of

income. She has filed a domestic violence case against her husband under Section 12 of the Protection of Women from Domestic Violence Act, 2005, before the Court of the learned Judicial Magistrate of First Class, Addateegala. As a counter-blast, the respondent-husband filed the subject O.P.No.285 of 2016 before the Family Court, Secunderabad, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. In the circumstances she is placed and due to her financial weakness and incapacity to undertake travel to attend the case filed by the husband in a Court at a place which is far away from the place of her residence, she is constrained to file the present petition for transfer of O.P.No.285 of 2016 from the file of the Family Court, Secunderabad, to the Family Court, Rajahmundry, East Godavari District.”

4. In the Indian context an earning male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a non-earning female or a house wife. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. 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.

5. In the result, this transfer petition is allowed and O.P.No.285 of 2016 is withdrawn from the file of the Family Court, Secunderabad, and transferred to the Family Court, Rajahmundry, East Godavari 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.

29th December, 2016
Bvv

M. Seetharama Murthi, J

