

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.533 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.35 of 2016 from the file of the learned Additional Senior Civil Judge, Anakapalli, Visakhapatnam District, and transfer the same to the Family Court, Vizianagaram, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri *M.Chalapati Rao*, the learned counsel for the petitioner-wife and Sri *S. Subba Reddy*, the learned counsel for the respondent-husband. I have perused the material record.

3. Shorn of unnecessary details, the case of the petitioner-wife is as follows: 'She is 28 years of age. After separation of the spouses, she is living with her parents in Nellimarla village of Vizianagaram District. Her father is an employee of Jute Mill at Nellimarla village. Having completed her graduation in medicine, she is preparing for higher education in the field of medicine. In the circumstances she is placed, she is not in a position to undertake travel all alone from her place of residence at Nellimarla Village of Vizianagaram District to Anakapalli, Visakhapatnam District, which is at a distance of approximately 80 kilometres. Her father, being an employee, is not in a position to accompany her to the Court at Anakapalli on the date of every

adjournment. Hence, she is constrained to file the present petition for transfer of H.M.O.P.No.35 of 2016 from the file of the Court of the learned Additional Senior Civil Judge, Anakapalli, Visakhapatnam District, to the Family Court, Vizianagaram.”

4. The case of the respondent-husband, in brief, is this: “He is aged 30 years. He is an Assistant Engineer, presently working at Rural Electrification Co-operative Society Limited, RECS, Kasimkota, Visakhapatham District. He has to attend electricity emergency services. His work requires him to move within his jurisdiction. Since Vizianagarm is only at a distance of 80 kilometres from Anakapalli, it is not difficult for the petitioner-wife to attend the Court at Anakapalli. Since his employment is related to emergency services, it is difficult for him to travel to Vizianagaram, in case the case is transferred to the Family Court, Vizianagaram. The petitioner wife is an educated woman and she can undertake travel all alone and it is not difficult for her to travel a distance of 80 KMs to attend the Court at Anakapalli, which is well connected by road and rail.”

5. Though the parties traded serious allegations in their respective pleadings in the original petition and in this transfer Civil Miscellaneous petition, there is no need to advert to the said aspects, considering the narrow compass of the matrix required for consideration in this petition for transfer. I have bestowed my attention to the facts and submissions.

6. The petitioner-wife is an educated lady, having completed her graduation in medicine. She is making preparations for higher

education in the field of medicine. She is presently staying with her parents at Nellimarla Village, Vizianagaram District. The distance to Anakapalli Court from her place of residence is about 80 KMs. The respondent-husband is an Assistant Engineer presently working at Rural Electrification Co-operative Society Limited, RECS, Kasimkota, Visakhapatham District. According to the submissions of the learned counsel for the respondent-husband, the respondent's work requires movements within his jurisdiction to meet the emergency electrical services. Having analysed the facts and submissions and considering the facts and circumstances that the wife is an educated lady and is not employed and that she is only preparing for higher education and that it is not difficult for an educated lady to travel to a short distance once or twice in a month even without the assistance of a male person, this Court is the considered view that the petitioner wife has not made out valid and sufficient grounds for considering her request in this petition.

7. Be that as it may. The learned counsel for the respondent-husband alternatively submitted that in case this Court comes to a conclusion that convenience of the wife is to be considered, the case may be transferred to the Family Court, Visakhapatnam, which is relatively at a lesser distance of about 40 kilometres from Vizianagaram. While making the said alternative submission, the learned counsel for the respondent-husband also would submit that the respondent-husband is prepared to bear the travelling and incidental expenses of the wife and a person accompanying her for attending the Court proceedings at the Family Court, Visakhapatnam, on every date of

adjournment on which she attends the said Court along with an accompanying male person. On this aspect, the learned counsel for the petitioner-wife would submit that Anakapalli is within Visakhapatnam District and therefore, the alternative submission of the learned counsel for the respondent-husband would be of no avail to the wife, if considered and the case is transferred to a Court at Visakhapatnam.

8. However, as this Court has already expressed an opinion that the wife's request to transfer the case to the Court at Vizianagaram has no merit, this Court is of the considered view that if the alternative submission of the learned counsel for the respondent-husband is accepted, the said course would sub-serve the ends of justice. Viewed thus, this Court finds that this transfer petition can be disposed of granting an appropriate relief.

9. In the result, this transfer petition is allowed in part and while declining to grant the request of the petitioner-wife for transfer of H.M.O.P.No.35 of 2016 from the file of the Court of the learned Additional Senior Civil Judge, Anakapalli, Visakhapatnam District, to the Family Court, Vizianagaram, this petition is ordered withdrawing the said O.P. from the file of the said Court and transferring it to the Family Court, Visakhapatnam, for trial and disposal in accordance with the procedure established by law. However, the respondent-husband shall pay a sum of Rs.500/- to the petitioner-wife towards travel and other incidental expenses on every date of adjournment on which she attends the Court at Visakhapatnam. The transferor Court shall transmit the duly indexed record to the transferee Court as expeditiously as possible.

On receipt of the said records, the transferee Court shall dispose of the subject O.P. as expeditiously as possible and in any event not later than six (06) months from the date of receipt of a copy of this order.

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

