

**HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

**Tr.C.M.P.No.486 of 2016**

**ORDER :**

This is a wife's application under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw F.C.O.P. (H.M.O.P.) No.233 of 2015 on the file of Family Court -cum-XII Additional District Court, Guntur, and transfer the same to the Family Court, Vijayawada, for trial and disposal along with M.C.No.211 of 2016 in accordance with the procedure established by law.

I have heard the submissions of the learned counsel for petitioner, Sri M.R.K.Chakravarthy. Though the respondent is served with notice, none appears for him.

I have perused the material record.

Shorn of unnecessary details, the case of the wife is this: 'After estrangement, she is presently living with her parents at Prasadampadu of Vijayawada (Rural) Mandal. She is having custody of two young boys aged 12 and 8 years. She had already filed a case for maintenance in M.C.No.211 of 2016 on the file of the Family Court at Vijayawada. The husband is a mimicry artist. He is presently staying at Nalla Cheruvu of Guntur District. The brother of the respondent/husband was involved in a murder case; therefore, she apprehends life threat at the hands of the respondent/husband and his family members; they are rich, influential and volatile in nature. The respondent is not providing any maintenance to her and her children. The husband is not having any responsibilities. In the circumstances she is

placed, she is unable to undertake travel from Vijayawada to Guntur to attend the Court case in F.C.O.P.No.233 of 2015 filed by the husband at Guntur for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. As the respondent is financially sound and as he has no other responsibilities as those being faced by the wife, it is not difficult for him to travel from his place in Guntur District to Vijayawada District and attend the Court at Vijayawada in case his case is transferred as prayed for in the petition of the wife.

The husband has not entered appearance and is not resisting the application.

It is well settled legal position that wife's convenience shall be preferred and shall prevail in the absence of any special circumstances warranting to take a different view. Further, the provision of Section 9 of the Hindu Marriage Act, 1955, as amended in the year 2003, gives liberty to the wife to file a petition under the provisions of the said Act before a Court within the local limits of whose ordinary original civil jurisdiction she is residing on the date of presentation of her petition. Thus, the statute gives a special status to the wife insofar as the place of suing. In view of the submissions of learned counsel for petitioner and in the absence of any special circumstances shown to the Court by the husband by entering appearance, this Court is satisfied that sufficient case is made out by the wife for granting relief as prayed for in her petition.

In the result, the Tr.C.M.P. is allowed and F.C.O.P. (H.M.O.P.) No.233 of 2015 is withdrawn from the file of Family Court-cum-XII

Additional District Court, Guntur, and is transferred to the Family Court, Vijayawada, for trial either simultaneously or jointly with M.C.No.211 of 2016 and disposal in accordance with the procedure established by law. No costs.

Pending miscellaneous applications, if any, shall stand closed.

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**M. SEETHARAMA MURTI, J**

17<sup>th</sup> November 2016

ajr

