

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.687 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.84 of 2016 from the file of the Court of the learned Principal Senior Civil Judge, Rajahmundry, and transfer the same to the Family Court, Visakhapatnam, for trial and disposal along with F.C.O.P.No.1035 of 2016 filed by the petitioner-wife on the file of the latter Court.

2. I have heard the submissions of Smt. Jayanti S.C. Sekhar, the learned counsel appearing for the petitioner-wife. I have perused the material record. Though notice is served on the respondent, none appears.

3. Shorn of unnecessary details, the case of the petitioner-wife is as follows: 'After separation of the spouses, she is living with her parents at Visakhapatnam. She is aged 27 years. She is a house wife. She has no income or sources of income. The husband is not paying any maintenance to her. After desertion by the husband, she filed O.P. in the Family Court, Visakhapatnam, for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955. As a counter-blast, the husband filed O.P. in the Court of Senior Civil Judge, at Rajahmundry, for dissolution of marriage and grant of divorce. Due to her financial weakness and incapacity and inability to undertake travel all alone from the place of her residence to the Court where the case filed by the husband is pending, she is constrained to file the present petition seeking transfer of the case filed by the husband in Principal Senior Civil Court, Rajahmundry to

the Family Court, Visakhapatnam, where the O.P. for Restitution of Conjugal Rights filed by her is pending.’

4. The learned counsel for the petitioner-wife, while reiterating the above stated submissions, requested for allowing this petition as prayed for.

5. One case is filed by the wife for restitution of conjugal rights and the other is filed by the husband for grant of divorce. Considering the issues involved in the two cases, it is in the interest of both the parties that both the cases should be tried and disposed of by a single forum, be it the Senior Civil Court, Rajahmundry or the Family Court, Visakhapatnam. Therefore, the issue for consideration is as to which of the two Courts should be preferred.

6. The learned counsel for the petitioner-wife submits that the respondent-husband is gainfully employed and being a male person, he can undertake travel without any difficulty and that he has no difficulties or responsibilities as those of the petitioner-wife in the present case. 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. Further, the provisions 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 within the local limits of the Court where she is residing on the date of presentation of the petition for restitution of conjugal rights. Thus, the statute gives special status to the wife insofar as the place of

suing. On the above analysis, this Court finds that the convenience of the wife should be preferred and shall prevail over the inconvenience, if any, which may be caused to the husband. Accordingly, this Court finds that sufficient cause is shown by the petitioner-wife for granting the relief claimed by her in this petition, more particularly in the light of the fact that the respondent, having not entered appearance, is not resisting the application.

7. In the result, this petition is allowed and O.P.No.84 of 2016 is withdrawn from the file of the Court of the learned Principal Senior Civil Judge, Rajahmundry, and is transferred to the Family Court, Visakhapatnam, for trial and disposal, either simultaneously or jointly, with F.C.O.P.No.1035 of 2016, in accordance with procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

08th December, 2016
Bvv

M. Seetharama Murti, J