

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.454 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure, 1908, requesting to transfer F.C.O.P.No.1075 of 2013 on the file of the Family Court, Visakhapatnam, to the file of the Court of the learned Senior Civil Judge, Amalapuram of East Godavari District, for trial and disposal in accordance with the procedure established by law.

F.C.O.P.No.1075 of 2013 is filed by the respondent-husband under Section 13(1) (i) and (ia) of the Hindu Marriage Act, 1955, for dissolution of marriage and grant of divorce.

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

3. Shorn of un-necessary details, the case of the wife is as follows: - 'After separation of the spouses, she is staying with her parents at Amalapuram. She filed MC.No.35 of 2014 on the file of the Court of the learned Additional Judicial First Class Magistrate, Amalapuram for award of maintenance. She is having custody of a school going 14 year old girl child. On account of her financial weakness and physical incapacity to undertake travel from Amalapuram to Visakhapatnam, she has filed the present transfer petition.'

4. The case of the respondent-husband is that FCOP.No.1075 of 2013 is filed in the year 2013 and that as of now the evidence on the side of the petitioner is almost completed and that in view of the stay orders granted in this transfer petition, the OP was posted to a date in December, 2016 and that earlier the wife filed TrCMP.816 of 2015 for the same relief and that the husband filed a counter and resisted the said application wherein she has shown her residential

address at Visakhapatnam and that in the said circumstances, she had withdrawn the said TrCMP on 19.07.2016 and filed this present transfer petition belatedly only to harass the husband and that since the FCOP is part heard, there are no grounds to consider the request of the wife.

5. I have given detailed and thoughtful consideration to the facts and submissions. The wife is presently staying with her parents at Amalapuram, according to her submission. The respondent-husband disputes the said fact and states that the wife is presently residing at Visakhapatnam and that even according to her own showing in her earlier TrCMP, she is a resident of Visakhapatnam. Be that as it may. The wife pleads financial incapacity and physical disability to undertake travel from Amalapuram to Visakhapatnam, more particularly, in the light of the fact that she is having custody of a 14 year old girl child. The fact to be noted is that the girl child has come of age by now. One of the contentions of the husband is that the 2nd respondent in the FCOP is the adulterer and therefore he was made as a party to the FCOP and that the said respondent is not made a party to the present petition. It is an undisputed fact that the earlier TrCMP filed by the wife for the self same relief was withdrawn and in that petition, Visakhapatnam was shown as her place of residence. Further, a number of hearings had already taken place in the Family Court, Visakhapatnam, where the FCOP is presently pending. Even assuming for a moment that the wife is presently residing at Amalapuram, yet this Court finds no grounds to order transfer in view of the reasoned finding.

6. On the above analysis of facts and submissions and in view of the ratio in the decision in Usha George v. Koshy George [(2000) 10 SCC 95], this Court is of the considered view that it is not just and proper to transfer the present case to any other Court as number of hearings had already taken place and the case is part-heard.

7. In the result, the TrCMP is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

24th November, 2016
Vjl

