

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.279 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure requesting to withdraw H.M.O.P. No.16 of 2016 on the file of the Court of the learned Senior Civil Judge, Mahabubabad of Warangal District, and transfer the same to the Court of the learned Senior Civil Judge, at Kothagudem of Khammam District, for trial and disposal in accordance with the procedure established by law.

2. Notice before admission came to be ordered on 09.06.2016. When the matter came up on 20.10.2016, the learned counsel for the petitioner submitted that the notices sent by registered post with acknowledgment due were returned 'unclaimed'. Hence, it is deemed that the respondent has been duly served. Despite service of notice, the respondent does not appear and resist the wife's petition.

3. The case of the wife, which is relevant for consideration, in brief, is as follows: 'The marriage of the petitioner and the respondent was solemnized on 28.12.2013 at Veera Bhramendra Swamy Kalyana Mandapam, Kothagudem town and Mandal of Khammam District as per Hindu Rites and customs. Under lawful wedlock, they were blessed with a daughter, Keerthana. They lead happy marital life for two years. Thereafter, the husband started harassing her for additional dowry and neglected the petitioner and her daughter. The petitioner is residing with her parents at Kothagudem Town of Khammam District, which is 200 KMs distance from Mahabubabad. She had already filed M.C.No.2 of 2016 against the respondent and the same is pending on the file of the Court of the learned III Additional Judicial First Class Magistrate, at Kothagudem. She had also initiated criminal proceedings in Crime No.296 of 2015 on the file of III Town Police Station, Kothagudem. She apprehends danger to her life. As she

has no means and is having a small child, she cannot travel to Mahabubabad from Kothagudem to contest the case filed by the husband.'

4. The respondent is not resisting the wife's petition.

5. On consideration of the relevant facts and the convenience of the wife and her child, this Court is of the view that sufficient case is made out by the petitioner wife for granting the relief. The view of this Court that the convenience of the wife has to be looked into finds support from the ratio in the decision in *Lalita V/s Kulwinder Kumar*¹. In the decision in *Rajani Kishor Pardeshi V/s Kishor Babulal Pardeshi*², despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition. In *Sumita Singh V/s Kumar Sanjay and Another*³, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at. In *Sangeeta @Shreya V/s Prasant Vijay Wargiya*⁴, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan. In the facts and the

¹ (2007) 15 SCC 667

² (2005) 12 SCC 237

³ (2001) 10 SCC 41

⁴ (2004) 13 SCC 407

circumstances of the instant case, as there are no special circumstances warranting taking a different view, the convenience of the wife is to be preferred over the convenience of the husband. The legal position and the circumstances indicated are sufficient to allow the wife's petition.

6. In the result, the Tr.C.M.P is allowed and H.M.O.P.No.16 of 2016 is withdrawn from the file of the Court of the learned Senior Civil Judge, Mahabubabad, Warangal District, and is transferred to the file of the Court of the learned Senior Civil Judge, Kothagudem of Khammam District, for trial and disposal in accordance with the procedure established by law.

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

24th October, 2016
RAR

M. SEETHARAMA MURTI, J

