

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer C.M.P.No.542 of 2017

ORDER:

This is a wife's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw O.P.18 of 2017 filed by the respondent/husband against her on the file of the Family Court, Khammam, and transfer the same to XV Additional District Court-cum-Additional Family Court, Kukatpally, at Miyapur, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of *Sri N.Manohar*, learned counsel appearing for the petitioner. The notice sent to the respondent was returned with an endorsement 'unclaimed'. It is represented that there is deemed service. The respondent has not entered appearance. I have perused the material record.

3. Shorn of un-necessary details, the case of the petitioner is this: 'After estrangement between the spouses, she is residing with her parents at Serilingampally, Hyderabad. She, being a Graduate in Medicine, is preparing for entrance examinations for higher studies. At present, she has no income or sources of income to meet the travel, lodging and other incidental expenses, as she is a student and is preparing for entrance examinations for higher studies. In view of the said facts, she is not in a position to attend before the Court at Khammam, on the date of each and every adjournment. She has also filed a D.V case in D.V.C.No.36 of 2015 on the file of the Court of the learned XIX Metropolitan Magistrate, Miyapur, Kukatpally. On dismissal of the said DV case for default, on 20.12.2016, she filed CrI.A.No.529 of 2017; and, the said appeal is pending on the file of the Metropolitan Sessions Court, Ranga Reddy District. She also filed M.C.No.52 of 2017

on the file of XV Additional District Court-cum-Additional Family Court, Kukatpally at Miyapur. The husband is required to come to Hyderabad, as his appearance is necessary in the above said cases. If the case filed by the husband is also brought to the Court of XV Additional District Court-cum-Additional Family Court, Kukatpally, at Miyapur, it would be convenient for both the parties.'

4. At the hearing, learned counsel for the petitioner while reiterating the pleaded case of the petitioner submitted as follows: - 'The distance between Hyderabad and Khammam is more than 175 KMs. The petitioner is a student and is preparing for entrance examinations. She is wholly dependent upon her parents. On the date of every adjournment of the said OP, she has to look for the assistance of one person to accompany her from her place of residence to Khammam. There is nobody to assist her. It is difficult for her to undertake travel and attend before the Court at Khammam on the date of each and every adjournment of the OP filed by the husband. Since the cases filed by her are pending in the Courts at Kukatpally, at Miyapur, it is just and fair to grant the relief.'

5. As already noted the respondent has not entered appearance and is not resisting the petition.

6. As per the settled legal position and preponderance of authority, the convenience of wife shall prevail and shall be preferred unless there are special circumstances warranting taking a different view. 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.

7. Having regard to the facts and the circumstances and as there are no special circumstances warranting taking a different view, this Court is satisfied that sufficient case is made out by the petitioner/wife for granting the relief as prayed for in her petition.

8. In the result, the petition is allowed and OP.No.18 of 2017 is withdrawn from the file of the Family Court, Khammam, and is transferred to the file of XV Additional District Court-cum-Additional Family Court, Kukatpally at Miyapur, for trial and disposal in accordance with the procedure established by law. The transferor Court is directed to transmit, without delay, the duly indexed record to the transferee Court.

There shall be no order as to costs.

Miscellaneous petitions pending if any in this TRCMP shall stand closed.

M. SEETHARAMA MURTI, J

06.10.2017
RAR