

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.645 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. No.88 of 2016 on the file of the Family Court, Kadapa, and transfer the same to the Family Court at Anantapur, for trial and disposal in accordance with the procedure established by law.

I have heard the submissions of Sri N.Aswarthanarayana, learned counsel for petitioner/wife and perused the material record. Though the respondent is served with notice, none appeared for him.

The case of the wife, shorn of unnecessary details, in brief, is this: "She is aged 27 years; she is working as an Attender in Syndicate Bank; she is having custody of two children, aged 5 and 4 years; she is presently staying at Anantapur in view of her employment; the respondent/husband filed the above said OP on the file of the Family Court, Kadapa. In the circumstances she is placed, she is facing lot of difficulties in attending the proceedings in the Court at Kadapa; the distance between Anantapur and Kadapa is about 200 kilometres; in view of the fact that she is having custody of two young children and she is also employed, she is unable to undertake travel on the dates of each and every adjournment of the case for attending the Court at Kadapa; hence, she is constrained to file the present petition for transfer of the OP filed by the husband to the Family Court at Anantapur from the Family Court, Kadapa."

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. As per the preponderance of the precedential authority, the wife's convenience is to be preferred and shall prevail, in the absence of any special circumstances warranting taking a different view. The husband, having not entered appearance and having remained *ex parte* has not shown any special circumstances to take a different view. The inconvenience and incapacity of the wife to undertake travel from Anantapur to Kadapa, where the OP filed by the husband is pending, require due consideration more particularly in the light of the fact that she is employed and is having custody of two young children.

Having regard to the submissions of the wife, this Court is satisfied that sufficient case is made out for granting the relief as prayed for in her petition.

Accordingly, the Tr.C.M.P. is allowed and F.C.O.P. No.88 of 2016 is withdrawn from the file of the Family Court, Kadapa, and is transferred to the Family Court, Anantapur, for trial and disposal in accordance with the procedure established by law. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

5th January 2017

ajr