

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.Nos.526 & 591 of 2017

COMMON ORDER:

Transfer C.M.P.No.526 of 2017 is filed by the wife requesting to withdraw F.C.O.P.No.410 of 2015 from the file of the Family Court, Secunderabad, and transfer the same to the file of Family Court, Hyderabad, for trial and disposal in accordance with the procedure established by law either jointly or simultaneously with FCOP 553 of 2017 already pending on the file of the latter Court.

1.1 Transfer C.M.P.No.591 of 2017 is filed by the husband requesting to withdraw F.C.O.P.No.553 of 2017 from the file of the Family Court, Hyderabad, and transfer the same to the Family Court, Secunderabad, for trial and disposal in accordance with the procedure established by law either jointly or simultaneously with FCOP 410 of 2015 already pending on the file of the latter Court.

2. Since the parties in the two Petitions are wife and husband and as the questions involved for consideration in both the Transfer Petitions are common and overlapping, both the petitions are heard together and are being disposed of by this common order.

3. For convenience and clarity, the parties shall hereinafter be referred to as the petitioner-wife and the respondent-husband as arraigned in Tr.CMP.No.526 of 2017 filed by the wife.

4. I have heard the submissions of Sri Manu, learned counsel for the petitioner-wife and of *Sri SLaxmikanth*, learned counsel for the respondent-husband. I have perused the material record.

5. To begin with, it is necessary to note that the wife filed F.C.O.P.No.553 of 2017 on the file of Family Court, City Civil Court, Hyderabad, under Section 9

of the Hindu Marriage Act, 1955 ['the Act', for short] for restitution of conjugal rights. The husband filed F.C.O.P.No.410 of 2015, under Section 13(1)(ia)(ib) of the Act, seeking dissolution of marriage, dated 13.11.2011, between the spouses by a decree of divorce.

6. The case of the wife, which is relevant for consideration, in brief, is as follows: "The marriage of the petitioner with the respondent was performed, on 13.11.2011, at Roop Garden Function Hall, Retibowli, Mehdiapatnam, Hyderabad. Immediately after the marriage, they lived together in the House No.99/2, Picket, Ramnagar, Secunderabad, for a period of about three years. Their marriage was consummated. Under lawful wedlock she gave birth to a baby girl, Marupaka Shruthika. On 17.01.2014, the petitioner and the respondent celebrated the first birthday of their child. The petitioner did not initiate any proceedings against the respondent with the fond hope that he would realise his mistake and would take her back to the matrimonial home. As the respondent failed to take her back along with the daughter, the petitioner is constrained to file the aforesaid FCOP 553 of 2017 in the Family Court, City Civil Court, Hyderabad, for restitution of conjugal rights. The petitioner is willing even now to join the respondent. At present, she is residing at Mehdiapatnam along with the daughter aged four years. It is difficult for her to contest the proceedings at Family Court, Secunderabad. Hence, she filed the present petition seeking transfer of the OP of the husband to the Family Court at Hyderabad, where the OP instituted by her is pending."

7. The case of the husband, which is relevant for consideration, in brief, is as follows: "The marriage is an arranged marriage. After separation, the respondent requested the petitioner to join the matrimonial home. After great persuasion, her family members sent the petitioner to the matrimonial home. However, for reasons stated, there was estrangement once again. Hence, this respondent filed FCOP 410 of 2015 on the file of the Family Court,

Secunderabad, for dissolution of marriage. The said FCOP 410 of 2015 underwent several adjournments; and, finally, the evidence of the petitioner was partly completed. At that stage, the petitioner surprisingly filed FCOP 553 of 2017 on the file of the Family Court, Hyderabad, seeking restitution of conjugal rights. The aforesaid action of the petitioner in filing the said FCOP 553 of 2017 at a stage when the enquiry in the FCOP 410 of 2015 is nearing its end is intended to harass the respondent. Hence, FCOP 553 of 2017 filed by the wife may be withdrawn from the Family Court, Hyderabad, and be transferred to the Family Court, Secunderabad.

8. I have given earnest consideration to the facts and the submissions of the parties made in line with their pleaded cases.

9. Wife's OP for restitution of conjugal rights is pending on the file of the Family Court, City Civil Court, Hyderabad; and, the Husband's OP for dissolution of the marriage is pending on the file of the Family Court, Secunderabad. 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 Family Court, Hyderabad or the Family Court, Secunderabad. Therefore, the issue for consideration is as to which of the two Courts should be preferred.

10. It is trite to note that the provision of Section 19 (iii-a) of the Act, as amended in the year 2003, postulates that in case, the wife is the petitioner, every petition under the said Act shall be presented to the District Court within local limits of whose ordinary civil jurisdiction she is residing on the date of the presentation of her petition. Thus, the statute gives special status to the wife insofar as to the place of suing. Further, as the wife is having custody of an young daughter and as there are no special circumstances warranting taking a different view, this Court finds that the convenience of the wife and her young

daughter is to be preferred over the convenience or inconvenience, if any, of the husband and that, therefore, the wife's request deserves to be considered.

11. In the result, Transfer CMP No.526 of 2017 filed by the wife is allowed and the Transfer CMP No.591 of 2017 filed by the husband is dismissed. As a sequel, FCOP 410 of 2015 filed by the respondent/ husband is withdrawn from the file of the Family Court, Secunderabad, and is transferred to the file of the Family Court, Hyderabad, for trial and disposal simultaneously with FCOP 553 of 2017 filed by the petitioner/ wife, however, in accordance with the procedure established by law. As the OP filed by the husband is said to be part heard, the transferor Court is directed to transmit, without delay, the entire duly indexed record of the case to the transferee Court.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

01.11.2017
RAR

