

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Tr.C.M.P.No.657 OF 2017

ORDER:

This is a wife's petition, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw O.P.No.65 of 2017 from the file of Senior Civil Court, Sircilla, Karimnagar District, and transfer the same to the Court of Senior Civil Judge, Siddipet, Medak District, for trial and disposal in accordance with the procedure established by law.

2. I have heard Sri P. Sriharinath, learned counsel for the petitioner/wife, and perused the material record.

3. Though, the respondent/husband is served with notice, he did not enter appearance and is not resisting the petition of the wife.

4. The case of the petitioner and the submissions made at the hearing, shorn of unnecessary details, in brief, are as follows:

"After estrangement between the spouses, the petitioner along with her minor child, aged about two years, is living at Siddipet along with her parents. She is a house wife and is depending upon her parents. She is unable to undertake travel from her place of residence at Siddipet to Sircilla, which is at a distance of about 35 to 40 Kilometers. She is not in a position to bear the travel and incidental expenses being already a dependant on her parents. Her husband is not coming forward to pay maintenance or other expenses. She has also filed a maintenance case in M.C.No.42 of 2017; and, it is pending on the file of the

Court of the learned 1 Magistrate of First Class, Siddipet. And a criminal case filed by her is under investigation. The respondent/husband is attending to the hearings in the maintenance case at Siddipet. The respondent/husband intentionally filed the OP for dissolution of marriage and grant of divorce in the Court at Sircilla, Karimnagar District. In the circumstances she is placed, she is constrained to seek transfer of the aforestated OP filed by the respondent/husband for dissolution of marriage and grant of divorce. If the request is not granted, she suffers serious and irreparable loss.”

5. As already noted, the husband is not resisting the petition. 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. Further, as per the settled legal position and preponderance of authority, the convenience of wife having a minor child in her custody shall prevail and shall be preferred unless there are special circumstances warranting taking a different view.

6. Having regard to the facts and the submissions of the petitioner and as there are no special circumstances warranting taking a different view, this Court finds that the convenience of the wife and her child is to be preferred over the convenience or inconvenience, if any, of the husband. Accordingly this Court holds that sufficient case is made out by the petitioner-wife for granting the relief.

7. In the result, this petition is allowed and O.P.No.65 of 2017 is withdrawn from the file of the Senior Civil Court, Sircilla, and is transferred to the Senior Civil Court, Siddipet, for trial and disposal in accordance with the procedure established by law. The transferor Court shall, without delay, transmit the duly indexed record to the transferee Court.

Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed.

There shall be no order as to costs.

October 26, 2017
MD

M.SEETHARAMA MURTI, J

