

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.601 of 2017

ORDER:

This is a wife's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw OP.No.93 of 2017 filed by the husband against her on the file of Senior Civil Judge's Court, Amalapuram, and transfer the same to the Family Court, City Civil Court, Hyderabad, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of P. Prabhakar Rao, learned counsel representing Sri M. Kishore Reddy, learned counsel for the petitioner. The petitioner filed track report from the web site of the Department of Posts showing delivery of notice on the respondent. 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 along with her teen-aged daughter at Gaddiannaram, Dilsukhnagar, Hyderabad. She is a practicing advocate and a panel advocate for Andhra Bank, United India Insurance Company and other institutions. Her daughter is studying 9th class in Sri Chaitanya School; her daughter who is a bright student is securing first rank and was also got selected from her school for NASA visit. The respondent is not doing any work though he is a double graduate in Sciences and Business Administration. After shifting to Hyderabad in the year 2005, the parties never went back; and, on persuasion of the petitioner, the respondent worked in a private organization for a couple of months. However, he did not spend any money of his on the petitioner and her daughter. While so, the respondent filed the afore-stated OP in the Family Court, Amalapuram, for restitution of conjugal rights. The petitioner is not in a position to leave Hyderabad in view of her profession and daughter's education. She has no assistance. She is not

in a position to undertake travel along with her child. Traveling from Hyderabad to Amalapuram involves lot of expenditure.

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 Amalapuram is more than 450 Kms., and that Amalapuram is not directly connected by train to Hyderabad. The journey by bus takes nearly 12 hours. The petitioner is a practicing advocate and she is taking care of her girl child who is studying 9th class. In the circumstances she is placed, she is not in a position to undertake travel along with the child on the date of every adjournment of the case filed by the husband in the court at Amalapuram. There is nobody to accompany her. She has to look for assistance on the date of every adjournment of the said case. The husband is not working and till recently he was in Hyderabad. Only for the purpose of filing the case he shifted to Amalapuram and got filed the OP in the court at Amalapuram to harass the petitioner and her daughter. Hence, 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. The wife specifically pleads physical inability to undertake travel from Hyderabad to Amalapuram, which is at a distance of more than 450 KMs and which is not well connected to her place of residence. She further submits that she is a practicing advocate and that her husband is not doing any work and that she has no support to make possible for her to attend the Court case before the Family Court, Amalapuram, on each and every date of adjournment, and that she has to look for assistance of one person on the date of each and every adjournment of the said case and that it is highly difficult for her to travel along with her young daughter from Hyderabad to Amalapuram and that if her request for transfer is not considered she and her daughter, who is bright student, will be put to irreparable loss and hardship. In the Indian context a

male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a female. 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 woman. Further, 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.

7. 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 daughter 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.

8. In the result, the petition is allowed and OP.No.93 of 2017 on the file of the Court of the learned Senior Civil Judge, Amalapuram, is withdrawn from the file of the said Court and is transferred to the file of the Family Court, City Civil Courts, Hyderabad, for trial and disposal in accordance with the procedure established by law.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

25.10.2017
Vjl