

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer C.M.P.No.512 of 2017

ORDER:

This Transfer CMP, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner/ wife requesting to withdraw FCOP.No.236 of 2017 from the file of the Family Court, Visakhapatnam, and transfer the same to the file of the XIII Additional District Court-cum-Additional Family Court, Miyapur, Ranga Reddy District, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of *Sri N. Raghava Rao*, learned counsel appearing for the petitioner-wife, and of Sri Muralidhar Patnaik, learned counsel for the respondent-husband. I have perused the material record.

3. Shorn of un-necessary details, the case of the petitioner-wife, which is relevant for consideration, in brief, is as follows: - 'After disputes and estrangement between the spouses, she is living at her parents' house at Kondapur, Hyderabad. At present she is pursuing her graduation through distance education at Hyderabad. She is under the care and protection of her parents. She has no income or sources of income. She is depending upon her parents. While so, she received notice from the Family Court, Visakhapatnam. She appeared before the Family Court, on 07.04.2017. She had incurred a huge expenditure in an amount of Rs.5,000/- on her travelling to and from Hyderabad and Visakhapatnam and stay at Visakhapatnam. She is not in a position to meet the travelling, lodging and incidental expenses on the date of every adjournment of the above said OP filed by the husband, which is pending on the file of Family Court, Visakhapatnam. She is also not in a position to undertake travel all alone on the date of every adjournment of the said OP. On the date of every adjournment, she has to look for one person to accompany

her from Hyderabad to Visakhapatnam and back to Hyderabad. The respondent is staying locally at Visakhapatnam. She apprehends danger to her if she alone visits Visakhapatnam without assistance of her father. In these circumstances, she is constrained to file the present petition.'

4. Though no counter is filed, the respondent orally resisted the petition.

5. At the hearing, learned counsel for the petitioner-wife while reiterating the pleaded case of the petitioner further submitted that for non appearance of the petitioner-wife before the Family Court in the afore-stated OP, the wife was set *ex parte* and the OP was posted to 06.12.2017.

6. I have given earnest consideration to the facts and submissions. 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 the respondent is not offering to pay the necessary travelling, lodging and incidental expenses to the petitioner/wife and as there are no special circumstances warranting taking a different view, this Court finds that the convenience of the wife is to be preferred over the convenience or inconvenience, if any, of the husband. Viewed thus, this Court is of the view that sufficient case is made out by the petitioner-wife for granting the relief and that the relief sought for, if granted, would meet the ends of justice.

8. In the result, the petition is allowed and FCOP.No.236 of 2017 on the file of the Family Court, Visakhapatnam, is withdrawn from the file of the said Court and is transferred to the file of the learned XIII Additional District Judge-cum-Additional Family Court, Panga Reddy District at Miyapur, for trial and disposal in accordance with the procedure established by law. However, the petitioner herein is directed to file before the Family Court, Visakhapatnam, within three weeks from the date of receipt of a copy of this order, an application, as per procedure, for setting aside the *ex parte* order, if such an application is not already filed till date. If any such application comes to be filed within the time fixed by this Court, the Family Court shall register and receive the same on file and transmit the same along with the record of the OP to the transferee Court as expeditiously as possible.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

27.10.2017
Vjl

