

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Tr.C.M.P.No.672 OF 2017

ORDER:

This is a wife's petition, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw H.M.O.P.No.238 of 2017 from the file of Family Court, Vijayawada, Krishna District, and transfer the same to the Family Court, Nellore, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri V.R. Avula, learned counsel for the petitioner-wife. I have perused the material record.

3. Learned counsel for the petitioner submits that the notice sent to the respondent-husband is duly served and the proof of service downloaded from the website of the postal department i.e., track report is filed into Court.

4. The respondent-husband has not entered appearance and is not resisting the petition of the wife.

5. The submissions of the petitioner-wife, shorn of unnecessary details, in brief are as follows:

“After disputes and estrangement between the spouses, she is residing along with her parents at Chinamachanuru Village, Marripadu Mandal, Nellore District. She is a house wife. She is not having any income or source of income. She is not in a position to travel all alone from her place of residence to Vijayawada, which is at about 400 Kilometers, to attend the Court case instituted by the respondent-husband in the Family Court, Vijayawada. Even the distance from her place of residence to Nellore is about 100 Kilometers. The respondent-husband is not

coming forward to pay traveling, lodging and other incidental expenses to her to enable her to undertake travel and attend the Court case instituted in the Court at Vijayawada. There is nobody to assist and accompany her to facilitate her attendance in the Court at Vijayawada. In the circumstances she is placed, she is constrained to file the present petition.”

6. 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 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 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 H.M.O.P.No.238 of 2017 is withdrawn from the file of the Family Court, Vijayawada, Krishna District, and is transferred to the Family Court, Nellore, for trial and disposal in accordance with the procedure established

by law. The transferor Court shall transmit the duly indexed record to the transferee Court as expeditiously as possible.

Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

October 26, 2017
MD

