

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.23 of 2017

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC seeking to withdraw F.C.O.P.No.69 of 2016 from the file of Family Court-cum-III Additional District Judge, Srikakulam and transfer the same to the Family Court-cum-III Additional District, Vizianagaram.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The marriage of the petitioner was performed with the respondent on 17.3.2003, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of the lawful wedlock, the petitioner and the respondent were blessed with two children. For one reason or the other, disputes arose between the petitioner and respondent, therefore, the petitioner has been residing at her parents' house in Gudem Village, Gorla Mandal, Vizianagaram District, along with her children. The petitioner filed M.C. No.22 of 2015 on the file of the Court of I Additional Judicial Magistrate of First Class, Vizianagaram against the respondent seeking maintenance under Section 125 of Cr.P.C. On 23.10.2015, the appellate court allowed M.C. No.22 of 2015 by granting maintenance of Rs.10,000/- to the petitioner and Rs.5,000/- each to the children. While things stood thus, the respondent filed F.C.O.P. No.69 of 2016 on the file of the Family Court-cum-III Additional District Judge, Srikakulam against the petitioner under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights.

4. It is the case of the petitioner that she is not in a possession to travel from Vizianagaram to Srikakulam along with her children to prosecute F.C.O.P. No.69 of 2016. The learned counsel for the petitioner submitted that petitioner's father expired recently.

5. While deciding the petitions of this nature, the court has to take into consideration the inconvenience likely to be caused to the parties to the proceedings more particularly to the wife and children. As per the principle enunciated in **Sumita Singh v. Kumar Sanjay**¹ and **Rachna Kanodia v. Anuk Kanodia**², the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

5. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the relief sought by the petitioner can be granted.

6. Sri Aravala Rama Rao, learned counsel for the respondent submitted that the respondent may face some difficulty to attend the Family Court, Vizianagaram on each and every date of adjournment, in view of his employment. As rightly pointed out by the learned counsel for the respondents, the respondent may face some difficulty to obtain leaves frequently in order to attend the Family Court, Vizianagaram. Even if the presence of the respondent before the Family Court, Vizianagaram is dispensed with, no prejudice will be caused to the petitioner.

¹ AIR 2002 SC 396

² 2001 (7) Supreme 96

7. Accordingly, the Transfer CMP is allowed. F.C.O.P. No.69 of 2016 is withdrawn from the file of the Family Court-cum-III Additional District Judge, Srikakulam and transferred to the file of Family Court-cum-III Additional District Judge, Vizianagaram, for disposal in accordance with law. The Family Court, Vizianagaram is hereby directed to dispense with the presence of the respondent in connection with F.C.O.P. No.69 of 2016, on each and every date of adjournment. However, he shall appear before the trial Court as and when his presence is so required. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 28.3.2017
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T. SUNIL CHOWDARY, J

