

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.636 of 2017

ORDER:

This is a wife's application, under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw O.P.No.357 of 2016 from the file of the Family Court, Visakhapatnam, and transfer the same to the Principal Senior Civil Court, Ramachandrapuram, East Godavari District, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri *S.V.S.S.Siva Ram*, learned counsel for the petitioner-wife. Though the first respondent is served with notice, he did not enter appearance and he is not resisting the application of the wife. The 2nd respondent is stated to be not a necessary party. I have perused the material record.

3. Shorn of unnecessary details, the case of the petitioner-wife is as follows: "After disputes and estrangement between the spouses, the petitioner-wife is living at Anaparthi along with her parents. She is having the custody of two minor children. She already filed a case for maintenance in the Court of Judicial Magistrate of First Class, Anaparthi, East Godavari District. On her complaint, a Calendar Case in C.C.No.403 of 2016 was also taken on the file of the Court of the said learned Magistrate for the offences punishable under Section 498-A of IPC and Sections 3 & 4 of the Dowry Prohibition Act. The respondent-husband is appearing in the above said cases. However, he (husband) filed the afore-stated OP in the Family Court, Visakhapatnam, as a counterblast to the cases filed by the petitioner/wife to harass her and her children. Her parents are not in a position to maintain her and her children. The respondent is not paying any amount towards

maintenance of the petitioner and her children. They have become an additional burden on her parents. She is not in a position to undertake travel all alone from Anaparthi to Visakhapatnam, which is at a distance of more than 300 kilometers, on the date of every adjournment of the case filed by the husband in the Family Court, Visakhapatnam. The husband is not coming forward to pay the travel, lodging and incidental expenses of the wife and one person, who has to accompany her to attend the Court case in the Family Court, Visakhapatnam. If the OP filed by the respondent-husband is transferred and brought to the file of a Court at the place where the cases filed by her are pending, it would not only be beneficial to the parties but would also save their money and time.”

4. 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.

5. 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 children 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.

6. In the result, the Civil Revision Petition is allowed and O.P.No.357 of 2016, 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 Court of the learned Principal Senior Civil Judge, Ramachandrapuram, East Godavari District, 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.

There shall be no order as to costs.

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

M.Seetharama Murti, J

Date: 25th October, 2017

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