

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI
TRANSFER CIVIL MISCELLANEOUS PETITION No.537 of 2017

ORDER:

This is a petition, under Section 24 of the Code of Civil Procedure, 1908, by the petitioner-wife requesting to withdraw F.C.O.P.No.8 of 2017 on the file of Family Court, Adilabad, and transfer the same to the Family Court, Nizamabad, where O.P.No.24 of 2017 filed by the husband for custody of the child, who is said to be now aged 11 years, is pending.

2. I have heard the submissions of the learned counsel for the petitioner and also of the learned counsel for the respondent. I have perused the petition as well as the counter.

3. Shorn of unnecessary details, the undisputed fact is that after estrangement, the spouses are living separately and that the wife, along with the child, is living with her parents at Nizamabad. Further, her submissions are as follows: 'She is depending upon the mercy of her parents. 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, Adilabad. She is also not in a position to undertake travel all alone with the child on the date of every adjournment of the said OP. The husband earlier filed old OP 47 of 2009 on the file of Family Court, City Civil Court, Hyderabad. At her request, by order, dated 15.03.2010, in Tr.C.M.P.No.13 of 2010, this Court transferred the said O.P., to the file of the Family Court, Nizamabad, and on such transfer, the said OP was re-numbered as OP No.24 of 2017. Later

the husband intentionally filed the present O.P.No.8 of 2017 in the Court at Adilabad, for dissolution of marriage, only on the ground that the marriage was performed at that place. The husband did so intentionally only to harass the petitioner-wife and her child.

4. Per contra, the case of the respondent/husband is that the cause of action in the said OP arose at Adilabad, and, therefore, the OP was validly instituted in the said court and that if the case in the Nizamabad Court is transferred to the Court at Adilabad, it would be convenient to both the parties.

5. I have given earnest consideration to the facts of the case.

6. Be it noted that the OP 24 of 2017, which is pending on the file of Family Court, Nizamabad, pursuant to an order of this Court in Transfer CMP No.13 of 2010 cannot now be transferred from the Family Court at Nizamabad merely on the ground that the husband filed a fresh OP in the Court at Adilabad for dissolution of the marriage between the spouses. It is not in dispute that the minor child is residing with the mother at a place which is within the territorial jurisdiction of Nizamabad. Section 9(i) of the Guardians and Wards Act, 1890, postulates that if an application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. Therefore, the OP on the file of the Court at Nizamabad, has to be tried by the said Court. If both the OPs are brought to the file of one Court, such a course would obviate the necessity of the parties adducing the same evidence twice in both the cases and helps in avoiding passing of conflicting orders. The wife also submits that she is not in a position to undertake travel along

with the child and that she is not having financial capacity to meet the travel, lodging and incidental expenses. Further, the husband is not coming forward to offer to pay the travelling, lodging and incidental expenses to the petitioner-wife and another person, who may accompany her, on the days she is required to undertake travel from Nizamabad to Adilabad to attend the case proceedings in the Court at Adilabad.

7. For the afore-stated reasons, this court is of the considered view that the request of the petitioner-wife merits consideration.

8. In the result, this Transfer Civil Miscellaneous Petition is allowed and the F.C.O.P.No.8 of 2017 is withdrawn from the file of the Family Court, Adilabad, and is transferred to the file of the Family Court, Nizamabad, for trial and disposal in accordance with law, either simultaneously or together with O.P.No.24 of 2017, which is pending on the file of the latter Court. Considering the fact that the matters are matrimonial matters and that one of the matters is with regard to the custody of the Child and is an old matter of the year 2009, the transferor Court is directed to expeditiously transmit the duly indexed record to the transferee Court. On receipt of the said record, the transferee Court shall endeavour to dispose of the afore-stated OPs as expeditiously as possible, preferably within four months thereafter.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

September 19, 2017
Lmv