

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.143 of 2018

ORDER:

This transfer petition is filed under Section 24 of CPC, seeking to withdraw F.C.M.O.P. No.43 of 2017 from the file of the Family Court-cum-III Additional District Court, Srikakulam and transfer the same to the file of the Family Court, Eluru, West Godavari District, for disposal along with O.P. No.24 of 2018.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the marriage of the petitioner was performed with the respondent on 01.3.2002 at Kodandarama Swamy Kalyana Mandapam, Srikakulam, as per Hindu rites and caste customs. Immediately after the marriage, the petitioner joined the respondent to lead marital life. Out of lawful wedlock, the petitioner and respondent were blessed with two children. For one reason or the other, disputes arose between the petitioner and the respondent; therefore, the petitioner has been residing at her parents' house in Eluru. While the things stood thus, the respondent filed F.C.M.O.P. No.43 of 2017 on the file of the Family Court-cum-III Additional District Court, Srikakulam under Section 13(1)(ia) read with Section 10 of the Hindu Marriage Act for dissolution of the marriage between him and the respondent. The petitioner filed O.P. No.24 of 2018 on the file of the Family Court, Eluru, for restitution of conjugal rights.

5. It is the case of the petitioner that she is facing much difficulty to travel from Eluru to Srikakulam to defend F.C.M.O.P.

No.43 of 2017 filed by the respondent. As rightly pointed out by the learned counsel for the petitioner, it may not be possible for the petitioner, to travel from Eluru to Srikakulam, along with two children, without the assistance of one of the male members of the family. Invariably, the respondent has to attend the Family Court, Eluru in view of pendency of O.P. No.24 of 2018 filed by the petitioner.

6. 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 **T.Gayatri Devi v Dr.Tallepaneni Sreekanth¹, Sumita Singh v. Kumar Sanjay² and Rachna Kanodia v. Anuk Kanodia³**, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife and children.

7. 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. Learned counsel for the respondent submitted that the respondent is a Government employee; therefore, it may not be possible for the respondent to obtain leave frequently; hence, his presence before the Family Court-cum-III Additional District Court, Srikakulam, on each and every date of adjournment, may be dispensed.

¹ 2013 (6) ALT 42 (SC)

² AIR 2002 SC 396

³ 2001 (7) Supreme 96

8. Accordingly, the Transfer CMP is allowed. F.C.M.O.P. No.43 of 2017 is withdrawn from the file of the Family Court-cum-III Additional District Court, Srikakulam and transferred to the file of the Family Court, Eluru, for disposal in accordance with law. The presence of the respondent before the Family Court-cum-III Additional District Court, Srikakulam, on each and every date of adjournment, in connection with F.C.M.O.P. No.43 of 2017, is dispensed with. However, he shall appear before the Family Court-cum-III Additional District Court, Srikakulam, as and when his presence is so required. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

Date: 14.12.2018
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T.SUNIL CHOWDARY, J

