

HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

TRANSFER CIVIL MISCELLANEOUS PETITION No.303 of 2017

ORDER:

This is an application by the wife seeking transfer of an application filed by the husband for divorce, under Section 10 of the Hindu Marriage Act, 1955.

Going by the pleadings of the respondent/husband in F.C.O.P.No.497 of 2017 instituted before the Family Court, Ranga Reddy District at L.B. Nagar, the petitioner and the respondent married on 29.08.2007. They have a girl child. The allegation of the respondent in the application for divorce includes the pleading that in May, 2012, the wife left the husband and went to Visakhapatnam by taking the child along with her, though she was studying in a school near to the matrimonial home in Ranga Reddy District. The application for divorce is filed in the year 2017. This means that at least for the period of five years after the so-called separation, the girl child is with its mother in Visakhapatnam.

The plea of the wife is that she does not have the financial ability or requisite support in terms of siblings or otherwise to go over to Ranga Reddy District and contest the proceedings

instituted by the husband. She therefore seeks transfer of that case to the Family Court, Visakhapatnam.

The fact that the wife resides in Visakhapatnam is not in dispute. As already noted, the daughter of the couple is with her mother in Visakhapatnam at least from May, 2012, even going by the pleadings of the husband in the application for divorce. The interest of the minor and orders that may be issued by the Family Court in relation to the minor as regards its custody, maintenance and allied matters are intricately connected with the application for divorce and these are all matters which the Court will have to consider if it ultimately proceeds to order divorce. The best interest of the child ought to be taken care of in such matters. This fundamental thrust of jurisprudence relating to such matters makes me to think that the proximity of seat of adjudication is now available to the residence of the child is the area to be preferred to carry forward this litigation. This is notwithstanding the fact that admittedly, for the last five years or more, the wife is staying in Visakhapatnam with her child as well.

For the aforesaid reasons, I am satisfied that this application is eligible to succeed.

In the result, this Transfer Civil Miscellaneous Petition is allowed transferring F.C.O.P.No.497 of 2017 from the Court of IV Additional District Judge-cum-I Additional Family Judge, Ranga Reddy District at L.B. Nagar, to the Family Court, Visakhapatnam.

Pending miscellaneous petitions, if any, shall also stand disposed of.

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THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 21.12.2018

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