

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. No.356 of 2015
& MP.No.1 of 2015

M.Vijay Lavanya

.. Petitioner

Versus

M.Saravana Priyan

... Respondent

Prayer: Petition has been filed under Section 24 of C.P.C., to withdraw the proceedings in H.M.O.P.No.162 of 2011 pending on the file of the Sub-Court at Pollachi and to transfer the same to the file of Family Court, Coimbatore.

For Petitioner : Mr.V.S.Usharani

For Respondent : Mr.S.B.Visvanathan

O R D E R

The petitioner/wife, who is the respondent in H.M.O.P.No.162 of 2011, has come forward with this petition to transfer the same from the file of the Sub-Court, Pollachi, to the file of the Family Court, Coimbatore.

2.Learned counsel appearing for the petitioner submitted that the respondent/husband has filed a petition in H.M.O.P.No.162 of 2011 for divorce before the Sub-Court, Pollachi, on the ground of cruelty and desertion. She further submitted that the petitioner is a permanent resident of Coimbatore and she is having 4 years old child. Hence, it is difficult for her to attend the Court at Pollachi. Therefore, she prays that H.M.O.P.No.162 of 2011 may be transferred from the file of the Sub-Court, Pollachi to the file of the Family Court, Coimbatore.

3.Resisting the same, learned counsel appearing for the respondent/husband submitted that now the case is posted for P.W.1's cross examination. He further submitted that the petitioner is residing at Pollachi along with her parents and the distance between Pollachi and Coimbatore is only 30 kilometers. He also submitted that the respondent / husband is

residing at Singapore and the presence of spouses are mandatory in the Family Court, whereas in Subordinate Courts, the presence of spouses in each and every hearing is not mandatory. Hence, he prayed for dismissal.

4. In reply, learned counsel appearing for the petitioner submitted that the case is posted for trial. The petitioner/wife is working at WIPRO Tidel Park, Peelamedu, Coimbatore and she is having 4 years old child. Hence, she prayed for transfer.

5. Considering the rival submissions made on both sides and on perusal of the typed set of papers, the respondent/husband himself has filed a petition in H.M.O.P.No.162 of 2011 for divorce on the ground of cruelty and desertion before the Sub-Court, Pollachi in the year 2011. The present Transfer Petition has been filed in the year 2015. According to the learned counsel for the petitioner, now, the petitioner is residing at Coimbatore and hence, she wants the case to be transferred to Coimbatore. However, the learned counsel for the respondent submitted that the petitioner has filed a maintenance petition before the Family Court, Coimbatore, where it was stated that she is under the care and custody of her parents.

6. On perusal of the typed set of papers filed by the petitioner shows that on 23.01.2015, P.W.1 was cross-examined and it was adjourned for continuation. It is pertinent to note that the presence of spouses are mandatory in the Family Court whereas in the Subordinate Courts, presence of spouses is not necessary. Further, the respondent / husband is residing at Singapore, in Family Court Coimbatore his presence is necessary for each and every hearing. In such circumstances, I am of view that the petitioner / wife is not entitled for transfer.

7. In the result, the Transfer Civil Miscellaneous Petition is dismissed. However, the Presiding Officer, Sub-Court, Pollachi, is directed to dispose of the petition in H.M.O.P.No.162 of 2011, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Presiding Officer, Sub Court, Pollachi.

+ 1 cc to Mr.V.S. Usharani, Advocate SR.67179

+ 1 cc to r.S.B. Viswanathan, Advocate SR.66992

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SK (CO)
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