



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2015

CORAM:

THE HONOURABLE Dr. JUSTICE P.DEVADASS

Tr.C.M.P(MD) No. 351 of 2015 and MP(MD)No.1/2015

Jawahar Nisha

.. Petitioner/Defendant

.Vs.

Abdul Aziz

.. Respondent/Plaintiff

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the case in O.S.No.88 of 2015 pending on the file of District Munsif Court from Aruppukkottai to Family Court, Chennai.

For Petitioner :Mr.M.Vivekanandan

For Respondent :Mr.S.Natarajan

O R D E R

The wife wants transfer of her husband's Original Suit in O.S.No.88 of 2015 from the Court of District Munsif, Aruppukkottai to the Family Court, Chennai.

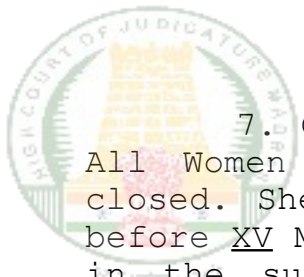
2. The Nikka between the petitioner and the respondent took place on 25.04.2010 at a place within Tiruchuli Taluk in Virudhunagar District. Difference of opinion arose between the spouses. The spouses are living separately.

3. Respondent filed the suit in O.S.No.88 of 2015 seeking restitution of conjugal rights under Mohamedian Law in the court of District Munsif, Aruppukkottai. In the meanwhile, the petitioner filed a complaint case under the Domestic Violence Act before XV th Metropolitan Magistrate Court, George Town, Chennai. Respondent filed a Criminal Original Petition under Section 482 of Cr.P.C before the Principal Bench of High Court to quash the said proceedings.

4. Now the petitioner says that she is residing in her brother's house along with her parents in Korukkupet, Chennai and she finds it difficult in travelling from Chennai to Aruppukkottai to face her husband's case. She wants transfer of the suit from Aruppukkottai to the Family Court, Chennai.

5. The learned counsel for the respondent submits that it is nothing but one way of harassing the respondent and the petitioner is having her house in Aruppukkottai and all the witnesses are residing in Aruppukkottai. Even now her parents are in Aruppukkottai. Thus, she has not made any valid ground for transfer.

6. I have anxiously considered the rival submissions. Perused the materials available on record.



7. Ofcourse, petitioner had earlier given a criminal case in All Women Police Station, Aruppukkottai which later came to be closed. She has filed a complaint case under Domestic Violence Act before XV Metropolitan Court in Chennai. Further, even in the plaint in the suit the respondent himself mentioned that his wife is residing in Korukkupettai. Witnesses are residing in Arupukkottai may not be a ground to refuse transfer of a matrimonial case. In the circumstances, if the suit is tried in the District Munsif's Court, Aruppukkottai, there will be much prejudice to the petitioner.

8. The Family Courts were constituted under the Family Court's Act, 1984. It is a secular Act. People of religious faith can go to the family Court for relief. The Family Court is open to both believer and non-believer. A suit for restitution of conjugal rights filed under the Islamic law is also a matrimonial proceeding. It will come under the jurisdiction of the Family Court (See Sections 7 and 8 of the Family Court's Act 1984).

9. 'Islamic law' loosely called as 'Mohamedian law' is also one of the major law dealing family matters. 'The Quran', the holy book and Hadeeth (Doings and Sayings of Prophet) are the major contents of jurisprudence namely, 'Sharia'. Mediation is to enable both parties to unburden their feelings and grievances at a negotiation table and to arrive at a peaceful settlement. It is not a modern innovation of legal thought. Mediation was already practised under Islamic law. Under Islamic Law, if a dispute or difference of opinion arose between the spouses, responsible person from each family should appear before a neutral party and the matter has to be negotiated. If it ends in failure, then only, any drastic action such as pronouncing 'Thalak' is to be made. This is what modern Mediation. Even Hindu Law promotes conciliation (See Section 23(2) of the Hindu Marriage Act, 1955).

10. Order 32-A Rule 3 C.P.C. also imposes a duty on the court to make every efforts to arrive at a settlement in matter concerning family. Such method of dispute resolution is also dealt with under Section 89 of Civil Procedure Code and also under the provision of the Legal Service Authorities Act, 1984.

11. In view of the foregoing, ordered as under:

i) The suit in O.S.No.88 of 2016 is transferred from the court of District Munsif, Aruppukkottai to the Court of Principal Judge, Family Court, Chennai.

ii) The Principal Judge, Family Court, Chennai shall endeavour to solve this family problem preferably through negotiation, mediation, conciliation, settlement and compromise.

iii) At any rate every effort to solve this matrimonial problem between the petitioner and the respondent and in any event within four months from the date of receipt of copy of this order, the Principal Judge, Family Court, Chennai, shall dispose of the case according to law. Accordingly, the Transfer



Civil Miscellaneous Petition is disposed of. No costs. Consequently, connected M.P is closed.

Sd/-
Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar.

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To

- 1.The Principal Judge, Family Court, Chennai.
- 2.The Principal District Judge, Virudhunagar at Srivilliputhur.
- 3.The District Munsif, Aruppukkottai.

+One cc to M/s.M.Vivekanandan, Advocate, SR.No.62410

+One cc to M/s.S.Natarajan, Advocate, SR.No.62806

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RL/6 c- 6/11/2015 - ARK

Tr.C.M.P (MD) No. 351 of 2015
and M.P. (MD) No. 1 of 2015