

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2016

CORAM

THE HON'BLE MS. JUSTICE R.MALA

Transfer C.M.P.Nos.580 of 2015 and 29 of 2016
M.P.No.1 of 2015 and C.M.P.No.406 of 2016

S.R.Gayathri ... Petitioner in Tr.C.M.P.No.580 of 2015
and respondent in Tr.C.M.P.No.29 of 2016
Vs.

V.Srivatsan ... Respondent in Tr.C.M.P.No.580 of 2015
and petitioner in Tr.C.M.P.No.29 of 2016

Transfer C.M.P.No.580 of 2015 is filed under Section 24 of Civil Procedure Code praying to withdraw proceedings in H.M.O.P.No.2447 of 2015 on the file of the Principal Family Court, Chennai and transfer the same to the Family Court at Coimbatore in lieu of the joint trial with the proceedings in H.M.O.P.No.506 of 2015 pending on the file of the Family Court at Coimbatore.

Transfer C.M.P.No.29 of 2016 is filed under Section 24 of Civil Procedure Code praying to withdraw proceedings in H.M.O.P.No.506 of 2015 pending on the file of the Additional Family Court at Coimbatore and transfer the same to the Principal Family Court at Chennai to facilitate a joint trial with the proceedings in H.M.O.P.No.2447 of 2015 pending on the file of the Principal Family Court at Chennai.

For Petitioner : Ms.V.S.Usha Rani
in Transfer C.M.P.
No.580 of 2015 and
respondent in
Transfer C.M.P.No.29
of 2016

For Respondent : Mr.N.Seshadri
in Transfer C.M.P.
No.580 of 2015 and
petitioner in
Transfer C.M.P.No.29
of 2016

O R D E R

For the sake of convenience, the parties are referred to as wife and husband. The marriage between the spouses had taken place on 29.1.2012. After the marriage, they left India. Because of difference of opinion, the wife returned back to India and she filed H.M.O.P.No.506 of 2015 on the file of Family Court, Coimbatore on 12.3.2015 for divorce on the ground of cruelty. After receipt of the summons, the husband filed H.M.O.P.No.2447 of 2015 on the file of the Principal Family Court, Chennai under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights on 3.6.2015.

2. The wife filed Transfer C.M.P.No.580 of 2015 seeking withdrawal of proceedings in H.M.O.P.No.2447 of 2015 pending on the file of the Principal Family Court, Chennai and transfer the same to the Family Court at Coimbatore for joint trial with the proceedings in H.M.O.P.No.506 of 2015. As a counter blast, the husband filed Transfer C.M.P.No.29 of 2016 seeking to withdraw proceedings in H.M.O.P.No.506 of 2015 pending on the file of the Family Court at Coimbatore and transfer the same to the Principal Family Court at Chennai for joint trial with the proceedings in H.M.O.P.No.2447 of 2015 pending on the file of the Principal Family Court at Chennai.

3. This Court heard the argument of the learned counsel appearing for the husband. The learned counsel for husband has raised 4 points for transfer of H.M.O.P.No.506 of 2015. Learned counsel would submit that as the video conference facility is available in the Family Court at Chennai and since the husband is working in a Multi-national Company, now put up at Los Angeles, California, USA, he appointed his father as a power of attorney, the interaction can only be done through video conference and as such he sought for transfer on that ground. The second ground raised is that the father of the husband was appointed as a power of attorney of the husband and the power of attorney is unable to attend the Court at Coimbatore due to the medical ground viz., he underwent angioplasty and he is advised not to travel for long distances. The third ground raised is that the husband is ready to pay the reasonable costs, daily expenses and also travelling expenses in 3 tier A/C from Coimbatore to Chennai and back. After hearing the arguments of the learned counsel for the wife, learned counsel for the husband raised another point that since the wife has raised a false statement, she is not entitled to the relief claimed in the transfer application filed by her. Hence, he prayed for transfer of H.M.O.P.No.506 of 2015 to the Principal Family Court at Chennai.

4. Resisting the same, learned counsel appearing for the wife would submit that the wife filed an application for divorce in H.M.O.P.No.506 of 2015 at earlier point of time. As a counter blast, H.M.O.P.No.2447 of 2015 has been filed by the husband and they now filed the application for transfer to Chennai. She would further submit that merely because the husband is not able to attend the Court, the transfer of H.M.O.P.No.506 of 2015 filed by the wife cannot be ordered. As per Section 7 of the Family Courts Act, 1984, the parties alone are competent to represent. Power agent's role is very limited. She further submitted that here the wife is not working and is unemployed and she is depending upon her parents. She is unable to travel frequently to Chennai from Coimbatore and attend the Court. Hence, she prayed for allowing of the application in Transfer C.M.P.No.580 of 2015. She further submitted that the inconvenience of the power of attorney is not a ground for transfer, that too, in matrimonial matters. Hence, she prayed for dismissal of the Transfer C.M.P.No.29 of 2016 filed by the husband. She further submitted that as per Section 19(iii-a) of the Hindu Marriage Act, wife is given liberty to file the application, where she resides. Furthermore, she filed an application in H.M.O.P.No.506 of 2015 before the Family Court, Coimbatore, where the marriage was performed and she is residing there with her parents. Hence, she prayed for dismissal of the Transfer petition in Tr.C.M.P.No.29 of 2016.

5. The wife filed an application in H.M.O.P.No.506 of 2015 in the Family Court at Coimbatore for divorce on the ground of cruelty. After receipt of summons therein, husband filed H.M.O.P.No.2447 of 2015 before the Principal Family Court, Chennai for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The wife filed transfer application in Tr.C.M.P.No.580 of 2015 before this Court for transfer of H.M.O.P.No.2447 of 2015 on the file of Principal Family Court to the Family Court at Coimbatore. Immediately, the husband filed Transfer application in Tr.C.M.P.No.29 of 2016 for transferring H.M.P.No.506 of 2015 pending on the file of Family Court, Coimbatore to the Principal Family Court at Chennai.

6. The above facts would show that since the wife filed application for divorce, immediately the husband filed application for restitution of conjugal rights. After filing of the said application for restitution of conjugal rights, the wife filed transfer application for transferring the said case to Coimbatore. Immediately, the husband filed transfer application seeking transfer of the case in H.M.O.P.No.506 of 2015 to the Family Court at Chennai, which shows the intention of the husband how to drag the wife.

7. Now the point to be decided in these cases is, whether there is any reason for transferring the case in H.M.O.P.No.506 of 2015 from Family Court at Coimbatore. Learned counsel for husband stating that video conference facility is available at the Family Court at Chennai, the transfer of H.M.O.P.NO.2447 of 2015 has to be made, so that the interaction with the husband can be made. It is true that video conference is available at Family Court, at Chennai. Even the said system of video conference is available at all the District Courts. In the matrimonial dispute, that too, in when cruelty is averred, examination of the party in the Court is necessary, because the demur of the witnesses has to be looked by the Court at the time of recording the evidence. Merely because the video conference facility is available at Chennai Court, it will not be a reason for ordering transfer. The next ground raised is the weakness of the power of attorney i.e., the power of attorney - father of the husband is suffering from some ailment and he underwent angioplasty and he was advised not to travel long distances. At this juncture, it is appropriate to consider Section 7 of the Family Courts Act, wherein it was stated that the party to the proceedings is only the spouses and not the third parties. Even as per the Family Courts Act, right of legal representative is not a matter of right. Further, Section 11 deals with proceedings to be held in in camera proceedings. Nowadays, as soon as the case has been filed, both the spouses are sent for counselling. Then only time has been granted for filing counter if the matter was not reconciled. So, merely because the power agent is not doing well, for convenience of the power of attorney, the case shall not be transferred, though the second ground is not a reason for transfer.

8. Learned counsel for the husband would submit that the wife had given a false statement that at the time of argument it was stated that in Chennai she is not having any house, however, her relatives alone are there. Learned counsel has taken me through page No.22 of the typed set of papers, wherein the wife has given acknowledgement of the receipt of her certificates and personal belongings, wherein, it is stated that 'our residence'(Residence: 11/30, Sadullah Street, T.Nagar, Chennai - 600 017). However, it was admitted by the learned counsel for husband that the said residence is not belonging to the wife. It is belonging to the maternal uncle of the wife. In such circumstances, I am of the view that the matrimonial dispute shall not be disclosed to third parties, that too, close relatives of the spouse. Merely because the relatives' house is situated at Chennai it is not the reason for transferring the case filed by her to Chennai. The non-disclosing of the same cannot be the suppression of material fact or giving a false statement by the wife. Learned counsel for the husband further submitted that the address of the wife as per Notice of Entry of Appearance as Attorney of Accredited Representative - Form G-28

at page NO.17 of the typed set of papers is 8/2, Murugesan Street, T.Nagar, Chennai. But admittedly, that house is belonging to the father-in-law of the wife, who is the power agent, which will show that the main aim of the husband is to drag the wife from post to pillar. Hence, the reason mentioned by the husband that the wife has given a false statement does not merit acceptance.

9. Learned counsel appearing for the husband would submit that the husband is ready to pay 3 tire AC travelling expenses and also day expenses for her attending the Court at Chennai for the cases. But I do not think merely because the husband is ready to spare the travelling expenses and day cost, it will not be a reason for ordering transfer. Here, there is a statutory protection - privilege given to wife under Section 19 (iii-a) of Hindu Marriage Act and that wife alone is having the said privilege. Even the Court has no territorial jurisdiction to decide as to before which Court the wife is entitled to file application. The marriage had taken place at Coimbatore and the wife is residing there permanently along with her parents at Coimbatore. In such circumstances, the reason assigned by the husband is not a valid reason for transferring H.M.O.P.No.506 of 2015 pending on the file of Family Court, Coimbatore to the Principal Family Court, Chennai for joint trial along with H.M.O.P.No.2447 of 2015.

10. Now, this Court has to decide as to whether the wife is entitled to get the transfer of H.M.O.P.No.2447 of 23015 on the file of Principal Family Court, Chennai to Coimbatore. It is pertinent to note that as already stated as per Section 19(iii-a) of Hindu Marriage Act, the wife is having the privilege. Since two cases are pending from two different Courts i.e., the wife filed a petition for divorce on the ground of cruelty and the husband filed an application for restitution of conjugal rights, to avoid multiplicity of proceedings and conflicting judgements, both the cases have to be tried before a single Judge. But here, this Court has already held that there is no reason for transferring H.M.O.P.No.506 of 2015 from Family Court, Coimbatore. So, it is the fit case for ordering transfer H.M.O.P.No.2447 of 2015 pending on the file of Principal Family Court, Chennai to the Family Court, Coimbatore for joint trial along with H.M.O.P.No.506 of 2015.

11. Learned counsel appearing for the husband submits that the Presiding Officer at Family Court, Coimbatore is committing procedural bias by adjourning the matter for short spells of time without issuing order copy even though the husband is working abroad. To support the said statement, the husband has not filed any document as to the passing of any order and filing of application before the said Court. Even no averment has not

been made in the affidavit filed in support of the transfer application. In such circumstances, it is not a ground for transferring H.M.O.P.No.506 of 2015.

12. For the foregoing reasons, the Transfer C.M.P.No.29 of 2016 is dismissed and Transfer C.M.P.No.580 of 2015 is allowed. H.M.O.P. No.2447 of 2015 pending on the file of Principal Family Court, Chennai is ordered to be withdrawn from the file and transferred to the Family Court, Coimbatore for joint trial along with H.M.O.P.No.506 of 2015 pending on the file of the Family Court at Coimbatore. The Presiding Officer of Principal Family Court, Chennai is directed to transmit the records in H.M.O.P.No.2447 of 2015 within a period of fifteen days from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Family Court Judge,
Chennai.

2.The Family Court Judge,
Coimbatore.

+2cc to Mr.Seshadri, Advocate, S.R.No.4628,4629

+2cc to M/S.Usharani, Advocate, S.R.No.3988,3989

सत्यमेव जयते

Tr.C.M.P.Nos.580 of 2015
and 29 of 2016

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