IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.09.2016
CORAM
THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
Transfer CMP.No.674 of 2015 and
M.P.No.1 of 2015

K.Niveditha ...Petitioner

vs.

N.Senchudar ...Respondent

PRAYER: Tr.C.M.P. filed under section 24 of C.P.C., to withdraw the proceedings in HMOP No.237 of 2014 on the file of learned Subordinate Court, Poonamallee and transfer the same to Principal Sub Court, Mayiladuthurai.

For Petitioner : Mr.R.Shivakumar for
M/s.K.M.Vijayan Associates

For Respondent : Mr.A.G.Rajan

O R D E R

The respondent in HMOP No.237 of 2014 on the file of the Sub-Court at Poonamallee has come up with this petition with a request to transfer the proceedings to the Principal Sub-Court at Mayiladuthurai for disposal.

2. In the affidavit filed in support of the petition, it is stated by the petitioner that she is a permanent resident of Mayiladuthurai and as such, it would not be possible for her to appear before the Court at Poonamallee for the purpose of defending the proceedings.

3. The respondent filed a counter affidavit, wherein, it was contended that only to exert influence, the petitioner has come up with this transfer petition.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

5. The divorce proceedings initiated by the respondent is now pending on the file of Sub-Court, Poonamallee. The petitioner is a resident of Mayiladuthurai. The petitioner has already filed proceedings in HMOP No.91 of 2015 before the Principal Sub-Court, Mayiladuthurai.

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6. The petitioner has come up with a grievance that it would not be possible for her to travel all along from Mayiladuthurai to Poonamallee for the purpose of defending the proceedings. The petitioner is unemployed. The respondent is employed at Chennai. It was only on account of his employment and residence at Chennai, he is opposing the prayer for transfer.

7. There is no dispute that the proceedings initiated by the petitioner in HMOP No.91 of 2015 for restitution of conjugal rights is now pending on the file of Principal Sub-Court, Mayiladuthurai. The respondent has not filed any application to transfer the said proceedings to the Court at Poonamallee. In case, two proceedings involving a common question are allowed to be prosecuted in two different courts, there is a possibility of passing contradictory orders in the very same subject matter.

8. Section 19(iii-a) of the Hindu Marriage Act, permits the wife to initiate matrimonial proceedings before the Court in whose jurisdiction she is residing at the time of institution of proceedings.

9. The petitioner has produced sufficient materials for withdrawal of the case from the Court at Poonamallee. I am therefore of the view that the transfer petition deserves to be allowed.

10. In the result, the proceedings in H.M.O.P.No.237 of 2014 is withdrawn from the file of the Sub Court, Poonamallee, and is transferred to the file of the Principal Sub-Court, Mayiladuthurai, for disposal along with HMOP No.91 of 2015.

11. The learned counsel for the respondent submitted that the respondent being an employee at Chennai, it would not be possible for him to appear before the Court at Mayiladuthurai on all the dates of hearing. It is open to the respondent to file an application before the Trial Court to dispense with his personal appearance, subject to the condition that he would appear on all the effective dates of hearing. In case, any such application is filed, the same shall be considered and disposed of by the learned trial Judge taking into account the employment of the respondent at Chennai, as indicated above.

12. The learned Trial Judge is requested to dispose of the matrimonial proceedings as expeditiously as possible.

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13. The Transfer CMP is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Poonamallee.
2. The Principal Sub Judge, Mayiladuthurai.

+1 cc to Mr.K.M.Vijayan Associates sr 54949
+1 cc to Mr.A.G.Rajan Advocate sr 54709

Transfer CMP.No.674 of 2015

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