

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28-03-2016

PRONOUNCED ON : 11-05-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.Nos.814, 815 of 2015 and 54 of 2016
and
M.P.Nos.1 of 2015 and C.M.P.No.1055 of 2016

Tr.C.M.P.No.814 of 2015

S.Jayalakshmi ... Petitioner

vs.

S.M.Senthilkumar ... Respondent

Transfer civil miscellaneous petition filed under Section 24 of the Code of Civil Procedure to withdraw GWOP/601337/2014 pending on the file of the Family Court, Coimbatore and transfer to the file of the Hon'ble Family Court at Chennai.

Tr.C.M.P.No.815 of 2015

S.Jayalakshmi Petitioner

vs.

S.M.Senthilkumar ... Respondent

Transfer civil miscellaneous petition filed under Section 24 of the Code of Civil Procedure to withdraw O.P.No.515 of 2015 pending on the file of the Family Court, Coimbatore and transfer to the file of the Hon'ble Family Court at Chennai.

For Petitioner : Ms.N.Lalitha
in both Tr.C.M.Ps

For Respondent : Mr.K.S.Karthik Raja
in both Tr.C.M.Ps

Tr.C.M.P.No.54 of 2016

S.M.Senthilkumar

...Petitioner

vs.

S.Jayalakshmi

... Respondent

Transfer civil miscellaneous petition filed under Section 24 of the Code of Civil Procedure to withdraw O.P.No.3485 of 2015 pending on the file of the Family Court II, Chennai and transfer to the file of the Hon'ble Family Court, Coimbatore

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Ms.N.Lalitha

O R D E R

Transfer civil miscellaneous petition Nos.814 and 815 of 2015 have been filed by Jayalakshmi, the petitioner therein against her husband S.M.Senthilkumar under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of GWOP/601337/2014 and H.M.O.P.No.515/2015 respectively, both filed by her husband Senthilkumar on the file of the Family Court, Coimbatore. Tr.C.M.P.No.54/2016 has been filed under Section 24 of the Code of Civil Procedure, 1908 by S.M.Senthilkumar for the transfer of O.P.No.3485/2015 filed by his wife Jayalakshmi on the file of the Family Court No.2, Chennai for divorce to the file of the Family Court at Coimbatore. Both the parties are represented by counsel. Senthilkumar has filed a counter affidavit in the transfer civil miscellaneous petitions filed by Jayalakshmi. A joint hearing of all the transfer civil miscellaneous petitions was held and the arguments advanced on both sides were heard. The materials produced in the form of typed sets of papers by both the parties were also perused.

2. S.Jayalakshmi is the wife of S.M.Senthilkumar and their marriage was solemnised at Coimbatore on 12.02.2004. They were blessed with a female child by name Sangamithira and she is now aged about 12 years. Owing to difference of opinion and incompatibility with each other, Jayalakshmi filed a petition in H.M.O.P.No.1112/2008 on the file of the Family Court, Coimbatore under Section 10 of the Hindu Marriage Act, 1955 for judicial separation. Her husband Senthilkumar besides resisting the said original petition, filed an application in I.A.No.561/2010 in

H.M.O.P.No.1112/2008 seeking interim custody of the child. However, the Family Court, Coimbatore granted only a visitation right to be with the child at the residence of Jayalakshmi between 10.00 a.m and 2.00 p.m on every Sunday. As he apprehended problem if he could go to the residence of Jayalakshmi to exercise the visitation right, he preferred a civil revision petition before this court in C.R.P.(PD) No.233/2011 and this court modified the order of the Family Court, Coimbatore and directed Jayalakshmi to take the child on every Sunday to V.O.C. Park, Coimbatore and leave her in the company of her father Senthilkumar between 4.00 p.m and 7.00 p.m.

3. Subsequently, Senthilkumar filed Contempt Petition No.1845/2012 before this court complaining that the order of the High Court in C.R.P.(PD) No.233/2011 was not complied with and Jayalakshmi committed contempt of court. In the said contempt petition, Jayalakshmi took a plea that her husband had not paid maintenance either to her or to her child. The contempt petition is still pending. However by an order of this court dated 02.09.2013 personal appearance of Jayalakshmi has been dispensed with. Meanwhile Jayalakshmi filed a Maintenance case in M.C.No.155/2012 and the Family Court, Coimbatore passed an order on 22.04.2014 directing Senthilkumar to pay a sum of Rs.2,000/- per month to Jayalakshmi and a sum of Rs.2,000/- per month to their minor daughter Sangamithira towards maintenance. Thereafter Jayalakshmi filed a domestic violence case in D.V.A. No.64/2014 on the file of the learned Judicial Magistrate No.7, Coimbatore and got an ex-parte interim order of protection restraining her husband Senthilkumar from entering the house wherein Jayalakshmi was residing and from entering the school in which she was working.

4. Meanwhile, Senthilkumar filed GWOP/601337/2014 on the file of the Family Court, Coimbatore under Section 7 of the Guardians and Wards Act, seeking custody of the child. Thereafter, Jayalakshmi chose to withdraw her petition for judicial separation, namely H.M.O.P.No.1112/2008 on the file of the Family Court, Coimbatore and then filed O.P.No.3485/2015 for divorce on the file of the Family Court, Chennai. The same is now pending on the file of the First Additional Family Court, Chennai. The respondent also filed O.P.No.515/2015 on the file of the Family Court, Coimbatore for the relief of restitution of conjugal rights. After having filed such a petition for divorce on the file of the Family Court, Chennai, Jayalakshmi has approached this court with the transfer civil miscellaneous petition Nos.814/2015 and 815/2015 seeking transfer of GWOP/601337/2014 and O.P.No.515/2015 from the file of the Family Court, Coimbatore, to the file of the Family Court at Chennai. Senthilkumar has filed transfer civil miscellaneous petition

No.54/2016 seeking transfer of O.P.No.3485/2015 from the file of the Family Court at Chennai to the file of the Family Court at Coimbatore, wherein the other two original petitions are pending.

5. It is the contention of Ms.N.Lalitha, learned counsel for the wife, who is the petitioner in Transfer Civil Miscellaneous Petition Nos.814 of 2015 and 815 of 2015 / respondent in Transfer civil miscellaneous petition No.54/2016, that unable to withstand the torture given by her husband at the places of work and by the vulgar and indecent SMS sent by him, Jayalakshmi had to shift her residence from Coimbatore to Chennai and file the divorce OP No.3485/2015 on the file of the Family Court at Chennai after withdrawing HMOP No.1112/2008 filed by her on the file of the Family Court, Coimbatore; that her husband Senthilkumar goes on harassing her without even paying the maintenance amount awarded by the court below; that she considers it unsafe to go to Coimbatore to attend the court in GWOP/601337/2014 and O.P.No.515/2015 filed by her husband for custody of the child and for restitution of conjugal rights and that hence she has selected the Family Court at Chennai as forum convenient and seeks transfer of the above original petitions to the said court.

6. Per contra, it is the contention of Mr.K.S.Karthik Raja, learned counsel for the husband, who figures as respondent in Tr.C.M.P.Nos.814 and 815 of 2015 and as petitioner in Tr.C.M.P.No.54/2016, that his wife, who violated the order of the interim visitation right and is facing contempt proceedings, chose to withdraw her petition for restitution of conjugal rights, namely H.M.O.P.No.1112/2008 on the file of the Family Court, Coimbatore and filed O.P.No.3485/2015 on the file of the Family Court at Chennai with the sole aim of denying visitation right; that the intention of Jayalakshmi is to harass her husband by dragging him to Chennai from Coimbatore; that she does not have a residence of her own at Chennai and that filing of the transfer civil miscellaneous petition Nos.814 and 815 of 2015 is motivated by malafide. The learned counsel for the husband also pointed out the fact that the domestic violence case D.V.A.No.64/2014 on the file of the Judicial Magistrate No.7, Coimbatore is still pending on the file of the learned Judicial Magistrate No.7, Coimbatore and Jayalakshmi has not sought for transfer of the same to Chennai. When questioned about the non-payment of the maintenance amount awarded by the court, the learned counsel initially submitted that it was not paid, since the order of interim visitation right was not complied with and Jayalakshmi had not turned up for receiving the maintenance amount. However, the learned counsel for the husband submitted that he would instruct Senthilkumar to make payment of maintenance as ordered by the court or to remit the

same into court, if circumstances would warrant and that the husband Senthilkumar would do it.

7. This court, on careful consideration of the rival contentions made on both sides, takes the view that there is no bona fide on the part of Jayalakshmi (wife) in seeking transfer of GWOP/601337/2014 and O.P.No.515/2015 from the file of the Family Court, Coimbatore to the file of the Family Court at Chennai and that on the other hand, the prayer for transfer of O.P.No.3485/2015 from the file of the First Additional Family Court, Chennai to the file of the Family Court at Coimbatore, where the other two original petitions are pending, made by Senthilkumar (husband) has got to be sustained. It is quite obvious that Jayalakshmi (wife) herself chose Coimbatore to be the place of suing by filing three cases H.M.O.P.No.1112/2008 and M.C.No.155/2012 on the file of the Family Court, Coimbatore and domestic violence case D.V.A.No.64/2014 on the file of the Judicial Magistrate No.7, Coimbatore. Subsequently, when she suffered an order of interim visitation right in her petition for judicial separation, namely H.M.O.P.No.1112/2008, she chose to withdraw the said HMOP in order to evade compliance with the order of interim visitation right, that too, after a contempt petition came to be filed against her and filed a fresh case in O.P.No.3485/2015 on the file of the Family Court, Chennai for divorce choosing Chennai to be the place of suing.

8. Of course, it is true that Section 19(iii-a) of the Hindu Marriage Act, 1955 came to be enacted to confer a benefit on the wife to sue for a matrimonial relief at the place of her residence and that such benevolent provision is to be given a liberal interpretation in favour of the wife as held by a Division Bench of this Court in R.Sridharan vs. Presiding Officer, Principal Family Court, Chennai and R.Sukanya reported in (2010) 4 CTC 822 and also myself in Divya Vikram vs. Vikram Vijayaraghavan [Tr.C.M.P.No.126 of 2016 decided on 28.03.2016]. But the same cannot be allowed to be exercised by the wife to harass the husband. Apart from the above fact that Jayalakshmi (wife) was residing in Coimbatore when she filed H.M.O.P.No.1112/2008, M.C.No.155/2012 and D.V.A.No.64/2014, there is no proof to show that she has shifted her residence to Chennai. What she has stated in her O.P.No.3485/2015 on the file of the First Additional Family Court, Chennai and in the Transfer Civil Miscellaneous Petition Nos.814 and 815 of 2015 is that she is residing with her sister in Chennai. That itself indicates that she is not having a separate residence of her own in Chennai. The address given by her in the transfer Civil Misceelaneou Petition Nos.814 and 815 of 2015 is as follows:

S.Jayalakshmi
D/o Late.R.Subramaniam
Presently residint at
No.4, Natesan Nagar
Mylapore
Chennai - 600 004

On the other hand, she furnished her address in O.P.No.3485/2015 filed on the file of the Fist Additional Family Court (Family Court No.2), Chennai as

Jayalakshmi
D/o Late.R.Subramaniam
New No.4, Old No.2, Natesan Colony
Alwarpet, Chennai - 18

The difference in her address found in O.P.No.3485/2015 and the Transfer C.M.P.Nos.814 and 815 of 2015 will show that the address cannot be true and on the other hand, shall be bogus. In addition she has not produced any document to prove her residential address in Chennai. Even if it is assumed for the sake of argument, without admitting, that Jayalakshmi now resides in Chennai, that itself will not be enough to sustain her prayer for transfer of GWOP No.1337/2014 and O.P.No.515/2015 from the file of the Family Court, Coimbatore to the file of the Family Court, Chennai. Allowing such a prayer will encourage like-minded people (wives) to change their addresses after the filing of the case, to a place which shall be inconvenient to the husband and seek transfer of the case to such place and thus harass the husband.

9. A careful consideration of the facts and circumstances of the case will show that the main intention of Jayalakshmi is to avoid compliance with the order granting interim visitation right to her husband Senthilkumar. It is also an admitted fact that from the date of passing of the order granting interim visitation right and also from the date of modification of the said order by the High Court in C.R.P.(PD) No.233 of 2011, Jayalakshmi did not comply with the said order even once. She wants to claim that she need not comply with the order, as her husband Senthilkumar failed to pay the maintenance amount awarded by the Family Court, Coimbatore. On the other hand, it is the contention of Senthil Kumar (husband) that besides failing to comply with the order of the interim visitation right, his wife Jayalakshmi failed to turn up for getting the maintenance amount awarded by the Family Court, Coimbatore. However he cannot avoid or evade payment of the maintenance amount awarded by the Family Court without seeking cancellation or modification of such order and contend that he could be excused for not making payment of maintenance amount, since his wife had not turned up to receive the maintenance amount.

Senthilkumar could have very well deposited the amount into court when his wife did not turn up for receiving the maintenance amount. At the same time, Jayalakshmi, the wife cannot be excused for non-compliance with the order granting interim visitation right, on the sole ground that her husband had not paid the maintenance amount awarded by the Family Court, Coimbatore. She could have very well filed necessary application for the recovery of the amount and also for the stoppage of the proceedings till such payment would be made.

10. In the light of the above said facts and circumstances, this court is of the considered view that the transfer civil miscellaneous petition Nos.814 and 815 of 2015 filed by Jayalakshmi deserve to be dismissed and the transfer civil miscellaneous petition No.54 of 2016 filed by the husband Senthilkumar deserves to be allowed subject to a condition that Senthilkumar should either pay or deposit the arrears of maintenance awarded by the Family Court, Coimbatore for the period ending with April 2016 in one lumpsum and thereafter continue to pay/deposit ever month.

In the result, Tr.C.M.P.Nos.814/2015 and 815/2015 are dismissed. Tr.C.M.P.No.54/2016 is allowed and O.P.No.3485 of 2015 is withdrawn from the file of the First Additional Family Court (Family Court No.2), Chennai and transferred to the file of the Family Court, Coimbatore. Senthilkumar, the petitioner in Tr.C.M.P.No.54/2016 is directed to either pay or deposit the entire arrears of maintenance in accordance with the order of the Family Court, Coimbatore in a lumpsum within a period of four seeks and thereafter continue to pay the maintenance amount every month without fail. In case of default in payment of the maintenance amount, the wife shall have the liberty to bring it to the notice of the Family Court, Coimbatore and the Family Court, Coimbatore shall pass necessary orders. Consequently, the connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

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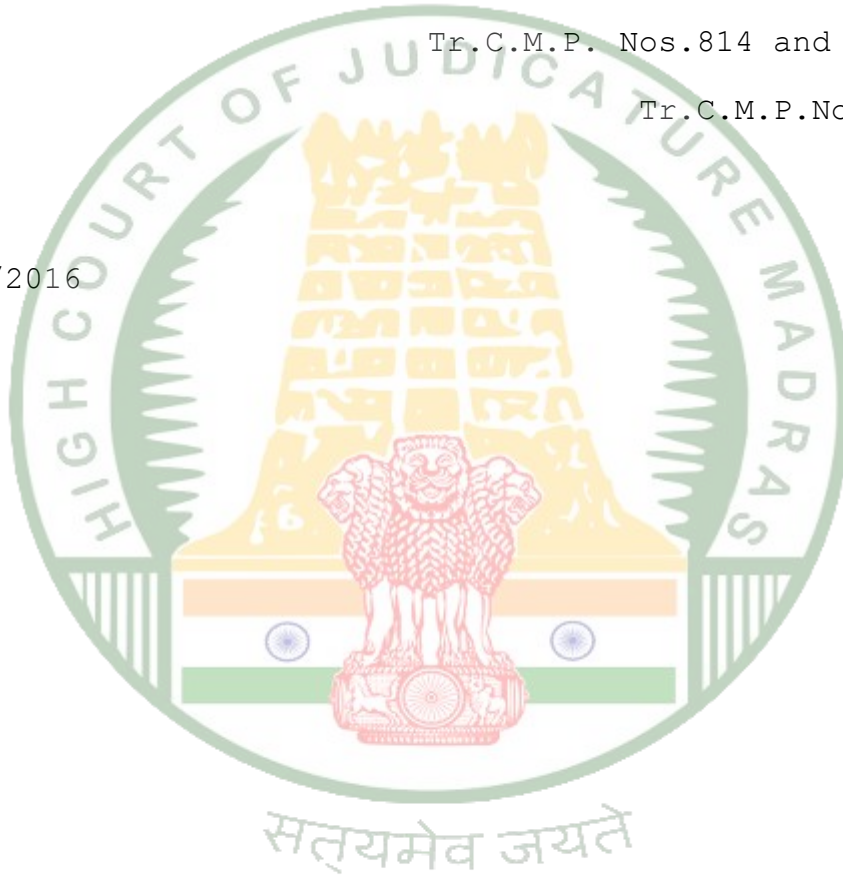
Sub Assistant Registrar

To

- 1) The First Additional Judge/ Family Court (Family Court No.2),
Chennai.
- 2) The Judge,
Family Court,
Coimbatore.

Tr.C.M.P. Nos.814 and 815 of 2015
and
Tr.C.M.P.No.54 of 2016

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