

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.890 of 2015

and

M.P.No.1 of 2015

E.Preethi
D/o.N.Ethiraj,
W/o.M.Muralitharan,
No.5A/11, 1st Floor,
Kandappa Achari Street,
Purasawalkam, Chennai 600 007 ... Petitioner

Vs

M.Muralitharan
S/o.Mohankumar,
No.30, 1st Floor,
Kali Amman Koil Street,
Velipalayam, Nagapattinam ... Respondent

Petition filed under Section 24 of the Civil Procedure Code to withdraw and transfer the proceeding pending in H.M.O.P.No.131 of 2015 from the file of learned Sub Court, Nagapattinam to any other competent Family Court at Chennai.

For Petitioner : Mr.A.Saravanan

For Respondent : Mr.J.Ramesh

O R D E R

The petitioner is the wife of the respondent herein. Both are doctors by profession. The respondent is employed in Government service, whereas the petitioner is employed in private sector. Their marriage took place in the year 2012 and they were blessed with a female child aged about 1 ½ years. Under the said circumstances, the respondent herein / husband filed a petition H.M.O.P.No.131 of 2015 on the file of Sub Court, Nagapattinam for divorce on the ground of desertion and cruelty.

2. The address of the petitioner herein, who has been made as the respondent in H.M.O.P, has been provided as Door No.5A/11, (I Floor), Kandappa Achari Street, Purasawalkam, Chennai. The H.M.O.P also recites that the marriage between them took place on 18.10.2012 at Purasawalkam, Chennai. The petitioner herein / wife, who entered appearance in the said H.M.O.P, has chosen to file the present transfer Civil Miscellaneous Petition for transferring the said H.M.O.P from the Sub Court, Nagapattinam to any one of the Family Courts at Chennai. The reason for seeking such a transfer is that the petitioner herein is not having sufficient income and she is also having a child aged about 1 ½ years.

3. The respondent herein filed a counter contending that the petitioner herein, after giving birth to a child did not go to the place of her husband to join with him and she did not even send a reply to the notice issued by him. The further averment made in the counter statement is that the respondent herein / husband will be put to hardship if he is dragged to Chennai as he is employed as an Assistant Surgeon at Government Hospital, Kilvelur, Nagapattinam District and that he is having aged parents to be taken care of, as they often fall sick and get bedridden.

4. It is the contention of the learned counsel for the petitioner that the reasons assigned for the objections raised in the counter statement are only the reasons invented for the purpose of harassing the petitioner by dragging her to Nagapattinam. The learned counsel for the petitioner submits that after the introduction of Section 19 (iii-a) of the Hindu Marriage Act making the place of residence of wife also the place wherein the H.M.O.P can be filed, the benefit conferred on the wife cannot be nullified or abridged by the husband choosing another place which is inconvenient to the wife as the place for filing the H.M.O.P for divorce or other reliefs under the Hindu Marriage Act. The learned counsel for the petitioner submits that the respondent herein wanted more money as dowry and in order to coerce the petitioner herein and her parents to meet with the demand made by him, he chose to file the petition for divorce before the Sub Court, Nagapattinam, which will be obvious even from the contents of the O.P filed by the respondent herein.

5. The learned counsel for the petitioner also points out the allegation found in the O.P that the petitioner refused to give respect to the family members of her husband as one of the grounds for claiming the relief of divorce. Learned counsel also points out the averment made in the O.P that the respondent and her father are earning more amount and have acquired more wealth and are leading a aristocratic life, which according to

him will show the intention with which the respondent has chosen to file O.P for divorce.

6. It is the further submission of the learned counsel for the petitioner that the petitioner is very much eager to join her husband, but it is the respondent, who evades the same because his demand for more money as dowry was not met with and that under the said circumstances the petitioner has been forced to seek the transfer of the H.M.O.P from Nagapattinam to Chennai.

7. Upon perusing the affidavit filed in support of the petition seeking transfer and the counter affidavit of the respondent, this Court is of the view that the petitioner is justified in seeking transfer of H.M.O.P.No.131 of 2015 from Sub Court, Nagapattinam to any one of the family Courts at Chennai. The contention raised by the learned counsel for the petitioner regarding the alleged demand of dowry cannot be taken into consideration at this point of time. Any attempt to consider the said contention may be viewed as an attempt to go into the merits of the case. Suffice to state that the reasons assigned by the respondent herein are not enough to deny the benefits sought to be conferred on the petitioner herein under Section 19 (iii-a) of the Hindu Marriage Act and that the petitioner has made out a case for staking claim to such a right conferred on her by the above said benevolent provision. For all the reasons stated above, this Court comes to the conclusion that the transfer Civil Miscellaneous Petition has to be allowed.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.131 of 2015 on the file of Sub Court, Nagapattinam is withdrawn and transferred to the file of Principal Judge, Family Court, Chennai for disposal, according to law. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
The Sub Court,
Nagapattinam,

2. The Principal Judge,
Family Court,
Chennai.

+lcc to Mr.A.Saravanan, Advocate sR.11185

Tr.C.M.P.No.890 of 2015
and
M.P.No.1 of 2015

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