

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.2505 of 2016
and
C.M.P.No.12940 of 2016

Manimegalai

.. Petitioner

vs.

Mahendran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 09.06.2016 made in Tr.O.P.No.120 of 2015 on the file of the Principal District Judge, Tirupur.

For Petitioner : Mr.A.K.Sridharan

For Respondent : Mr.B.Vijayakumar

ORDER

The petitioner filed a petition for divorce in HMOP No.240 of 2013 before the Subordinate Court at Thirupur. The respondent, on the other hand, filed HMOP No.126 of 2013 before the Subordinate Court at Dharapuram, praying for a

decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

2. The petitioner filed Transfer O.P.No.120 of 2015 before the Principal District Judge, Thirupur, praying for an order for transfer of the Proceedings in HMOP No.126 of 2013 for disposal along with HMOP No.240 of 2013. The learned District Judge dismissed the petition primarily on the ground that the petition filed under section 9 of the Hindu Marriage Act should be given preference than any other matrimonial proceedings between the parties. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

3. The learned counsel for the petitioner contended that the petitioner is residing at Thirupur and as such, it would not be possible for her to defend the proceedings now pending before the Subordinate Court at Dharapuram. According to the learned counsel, the Transfer O.P. filed by the petitioner was not opposed by the respondent. Even then, the learned Principal District Judge dismissed the petition.

4. The learned counsel for the respondent while justifying the order passed by the learned Principal District Judge, contended that the respondent is residing at Dharapuram along with a minor child. According to the learned counsel, it would not be possible for the respondent to travel from Dharapuram to Thirupur along with the minor child given his profession as an agriculturist.

5. There are two proceedings pending before two different Courts. The Proceedings in HMOP No.240 of 2013 instituted by the petitioner for divorce is pending on the file of the Subordinate Court at Thirupur. The Proceedings instituted by the respondent in HMOP No.126 of 2013 for restitution of conjugal rights is pending on the file of Subordinate Court at Dharapuram. If two cases are taken up by two different Courts, there is a possibility of passing contradictory orders in the very same subject matter.

6. 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.

7. The petitioner is a permanent resident of Thirupur. The petitioner has come up with a grievance that it would not be possible for her to appear before the Trial Court at Dharapuram and defend the proceedings. The respondent, on the other hand, has come up with a grievance that he being an agriculturist and looking after his minor child, it would not be possible for him to appear before the Subordinate Court at Thirupur. The Court has to balance the equity in a matter of this nature.

8. In the result, the Order dated 9.6.2016 in Transfer O.P.No.120 of 2015 is set aside.

9. The proceedings in HMOP No.126 of 2013 is withdrawn from the file of Subordinate Court at Dharapuram and is transferred to the file of Subordinate Court at Thirupur for disposal along with HMOP No.240 of 2013.

10. The respondent is given liberty 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.

11. The learned Subordinate Judge at Thirupur is directed to dispose of the proceedings, as expeditiously as possible, and in any case, on or before 31 March, 2016.

12. The Civil Revision Petition is allowed as indicated above. No costs. Connected Miscellaneous Petition is closed.

24.10.2016

Index : yes / no

Internet :yes / no

asvm

K.K.SASIDHARAN, J.

(asvm)

To

- 1.The Principal District Judge, Tirupur.
- 2.The Subordinate Judge, Dharapuram.
- 3.The Subordinate Judge, Thirupur.

C.R.P.(PD) No.2505 of 2016
and
C.M.P.No.12940 of 2016

24.10.2016

<http://www.judis.nic.in>