

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE P. R. SHIVA KUMAR

Tr.C.M.P.No.126 of 2016
and C.M.P.No.3102 of 2016

Divya Vikram

.. Petitioner

Vs.

Vikram Vijayaraghavan

.. Respondent

Petition to transfer the case under Section 24 of the Code of Civil Procedure to withdraw and transfer the HMOP No.110 of 2016 on the file of the First Family Court, Chennai and transfer the same to any Family Court, Coimbatore.

For petitioner :: Ms. P.T. Asha
for M/s. Sarvabhauman Associates

For respondent :: Mr. G.K.Harihara Rajan

ORDER

The wife is the petitioner and the husband is the respondent in the Transfer Civil Miscellaneous Petition. the respondent herein/husband filed HMOP No.110/2016 on the file of the Family Court, Chennai, which is now pending on the file of the I Additional Judge, Family court, Chennai, for a decree of divorce dissolving the marriage between the petitioner and the respondent herein. The petitioner in the transfer civil miscellaneous petition (wife) has now come forward with the present petition for the transfer of the above said OP, namely HMOP No.110/2016 to the file of the Family Court, Coimbatore, within whose jurisdiction she resides. The respondent has filed a counter containing several allegations pertaining to the merits of the main HMOP.

2. The arguments advanced by Ms. P.T.Asha, learned counsel for the petitioner and by Mr.G.K. Harihara Rajan, learned counsel for the respondent are heard. The materials produced in the form of typed set of papers are also perused.

3. Ms.P.T.Asha, learned counsel for the petitioner argued that after the introduction of Section 19(iii-a) of the Hindu Marriage Act, 1955, the place of residence of the wife is also

made a place wherein the matrimonial OP can be filed, either it be a petition filed by the husband or a petition filed by the wife; that as such, the prayer made by the petitioner for the transfer of the HMOP to the Family Court, Coimbatore is nothing but a prayer for the transfer of the case from one court having jurisdiction to the other court having jurisdiction regarding the very same matter; that if at all the prayer has been made for transferring the HMOP to a court within whose jurisdiction the cause of action did not arise and in which court the petition could not have been filed, then the objection made by the respondent would have some substance in it and that the prayer made by the petitioner (wife) for the transfer of the HMOP from one jurisdictional court to the other jurisdictional court on the ground of convenience should be liberally considered in favour of wife, so as to give a meaningful effect to the intention of the Legislature in enacting Section 19(iii-a) of the Hindu Marriage Act, 1955.

4. The following are the grounds on which the learned counsel for the respondent/husband resists the application for transfer of the HMOP from the file of the I Additional Judge, Family Court, Chennai to the file of the Family Court, Coimbatore:

i) The petitioner (wife) gave birth to a premature child, as the child was born one month prior to the expected date of delivery and against the wishes and advice of the respondent herein (husband), the petitioner herein took the child all the way from Chennai to Coimbatore covering a distance of 500 KM, unmindful of the risk involved to the child and the same will show the intention of the petitioner (wife) to change her residence and drag the respondent (husband) to a place inconvenient to him; and

ii) The apprehension expressed by the petitioner (wife) in the supporting affidavit that pressures would be applied on the Family Courts at Chennai, since the mother-in-law of the petitioner is a Judicial Member in the Income Tax Appellate Tribunal and husband and other in-laws of the petitioner are practising lawyers in Chennai, cannot be accepted to be either genuine or a sufficient reason for seeking transfer of the HMOP from Chennai to Coimbatore. The said contention of the petitioner may even amount to scandalising court and undermining the dignity of the court in which the HMOP is pending.

5. The above said objections are dealt with in the reverse order. No doubt the petitioner has made an averment in the supporting affidavit that she apprehends that some kind of pressure may be applied on the Judge of the Family Court, Chennai, because the mother of the respondent is a Judicial Member of Income Tax Appellate Tribunal. Merely because the

mother of the respondent is a Judicial Member of Income Tax Appellate Tribunal, it cannot be assumed that she would be in a position to pressurise the Judge of the Family Court at Chennai to pass an order in favour of her son. The learned counsel for the respondent is justified in contending that such an apprehension expressed by the petitioner is unfounded and it may even amount to scandalising the Judicial and Quasi-Judicial Authorities. However, simply because such an untenable averment has been made by the petitioner in order to seek the transfer of the HMOP from Chennai to Coimbatore, she cannot be denied the relief sought for on the said ground alone, if she is found otherwise entitled to such an order of transfer.

6. The next objection raised by the learned counsel for the respondent shows his male chauvinism by holding out that the wife has to obey his direction as to where the child should be brought up. The fact that the petitioner in the transfer civil miscellaneous petition (wife) has taken the child along with her and is residing at Coimbatore with her parents has been shown as an act of cruelty on the part of the respondent herein (husband) to seek the relief of dissolution of marriage by a decree of divorce. Though the respondent/husband could have projected the said act on the part of the petitioner in the transfer civil miscellaneous petition in leaving the respondent (husband) as an act of desertion to seek divorce, he has chosen to file the HMOP for divorce only on the ground of cruelty and also alleged unsoundness of mind (mental disorder) of the petitioner herein (wife).

7. The petitioner has made a categorical averment that she was forced by the circumstances to leave Chennai along with her parents, even though her parents had taken a flat for rent in Chennai, as desired by the respondent (husband) and his parents, for her confinement and delivery of the child. It is also her statement that the acts of the respondent herein (husband) and the in-laws of the petitioner in exposing the child to health hazard by taking the child alone to the place of their residence whenever visitors would come to see the child, despite the resistance made by the petitioner (wife) and the neglect shown by them towards her, forced her to leave Chennai and be under the protection of her parents in Coimbatore. If the said contentions are properly considered, one cannot come to even a prima facie conclusion that there shall be a hidden agenda in the petitioner's shifting her residence to Coimbatore, namely to use it as a ruse for seeking transfer of the HMOP to Coimbatore from Chennai.

8. In any event, the petitioner, after shifting her residence to Coimbatore, has not chosen to file any matrimonial original petition at Coimbatore. If at all she has filed such a petition immediately after shifting her residence to coimbatore,

there may be a chance of assuming that the shifting of her residence was only for the purpose of filing the matrimonial original petition at Coimbatore and seeking the transfer of the petition filed by the respondent/husband from Chennai to Coimbatore.

9. On the other hand, it is the respondent (husband), who chose to file the matrimonial original petition for dissolution of marriage by a decree of divorce. In his original petition itself, the address of the petitioner herein (wife) has been provided as "No.14, Santhosam Comfort Homes, Siruvani Road, Pachapalayam, Coimbatore - 641 010". The respondent knew pretty well that the petitioner herein was residing at Coimbatore and still he chose to file the petition in the Family Court at Chennai, even though he could have filed the same in the court at Coimbatore. Of course, the choice of Chennai as the place of suing made by the respondent herein/husband cannot be found fault with, because both of them, admittedly, last resided together within the jurisdiction of the Family Court at Chennai. However, learned counsel for the respondent/husband has made an attempt to contend that the petitioner (wife) wants to get transfer of the HMOP on the ground that the Family Court at Chennai is not having the jurisdiction to entertain the original petition. In such an attempt alone, the learned counsel for the respondent has argued that when the HMOP was filed by the husband in a court having jurisdiction over the place wherein the couple last resided together, the said original petition should be deemed to have been filed in a court having jurisdiction to entertain the same and that hence the transfer sought for could not be made.

10. The said contention has been raised on a misconception of the nature of the grounds raised by the petitioner in the transfer civil miscellaneous petition. The petitioner has not sought transfer of the HMOP on the ground that the Family Courts at Chennai do not have jurisdiction to try the same. On the other hand, transfer has been sought invoking the general power of transfer of the High Court under Section 24 of the Code of Civil Procedure, 1908. To be precise, what the petitioner (wife) has sought is the transfer of a case to a forum convenience. Such choice of forum convenience by the wife is recognised under Section 19(iii-a) of the Hindu Marriage Act, 1955.

11. In fact, the Supreme Court wayback in 2001 held that matrimonial proceedings filed by the husband can be sought to be transferred to the court having jurisdiction over the place wherein the wife is living on the ground of convenience. In Sumita Singh vs. Kumar Sanjay and Another reported in AIR 2002 SC 396, the Hon'ble Supreme Court held that a wife living at Delhi could seek transfer of the matrimonial proceedings initiated by her husband in Ara, which is about 1100 Kms from

Delhi to a court in Delhi on the ground of inability to travel the said distance as she was residing with her parents at Gurgaon.

12. Similar is the view expressed by the Supreme Court in *Vinitha Jitesh Tolani @ Manmeet Laghmani vs. Jitesh Kishore Tolani* reported in 2010 (6) Bom. C.R.145, where the Supreme Court transferred husband's petition from the Court of Civil Judge at Goa to the Family Court at Delhi and dismissed the petition filed by the husband seeking the transfer of the wife's petition filed against the husband.

13. 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 interpreting Section 19(iii-a) of the Hindu Marriage Act, 1955 to be a benevolent provision intending to confer benefit on the wife in respect of the choice of jurisdiction, chose to make an observation that such a provision meant for benefiting the women of our country should be given a meaningful interpretation by the court. The relevant paragraph is extracted hereunder:

"22. While considering a provision like section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts."

If a meaningful interpretation to the said provision (Section 19 (iii-a) of the Hindu Marriage Act, 1955) is made, then the plea of the wife for transferring the matrimonial proceedings instituted against her by her husband in a court within whose jurisdiction her place of residence does not come to a court having jurisdiction over her place of residence has to be construed as an attempt to avail the benefit sought to be given in the said provision and such prayer for transfer has to be accepted.

14. The above said observation shall not apply in cases of lack of bonafide on the part of the wife in seeking such transfer, for example, wife shifting her residence after

receiving summons in the matrimonial proceedings with a view to seek transfer of the proceedings to the other court. In the case on hand, even on the date of filing of the matrimonial proceedings by the husband, the wife was residing in Coimbatore. Hence there is no lack of bonafide or presence of malafide in her petition seeking transfer of the case from Chennai court to Coimbatore court. For all the reasons stated above, this court comes to the conclusion that the transfer civil miscellaneous petition is bound to be allowed.

Accordingly, the transfer civil miscellaneous petition is allowed. HMOP No.110 of 2016 pending on the file of the First Additional Judge, Family Court, Chennai is withdrawn from the said court and transferred to the file of the Family Court, Coimbatore. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asr

To

- 1) I Additional Judge, Family Court, Chennai
- 2) Family Court, Coimbatore

+1 cc to M/s.Sarvabhauman Advocate sr.19250

+1 cc to Mr.G.K.Harihara Raja Advocate sr.19209

सत्यमेव जयते

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