

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.161 of 2016

&

C.M.P.No.4408 of 2016

S.Devi

... Petitioner

Vs.

V.Devapureeswaran

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code praying to withdraw H.M.O.P.No.407 of 2012 filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955 pending on the file of the Sub-Court, Tambaram and transfer the same to the file of the Family Court, Puducherry for being tried along with H.M.O.P.No.102 of 2016 filed under Section 9 of the Act and dispose of the same in accordance with law.

For Petitioner : Mr.M.Sivavarthanan

For Respondent : Dr.R.Sampath Kumar

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the wife against the respondent/husband for transferring H.M.O.P.No.407 of 2012 filed by him for divorce from the file of Sub-Court, Tambaram to the file of Family Court, Puducherry for being tried along with her petition H.M.O.P.No.102 of 2016 filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

2. The petition is resisted by the respondent/husband. He has also filed a counter. The submissions made by the counsel appearing on both sides are heard.

3. The petition for divorce was originally filed by the respondent herein before the Sub-Court, Ponneri as H.M.O.P.No.35 of 2011. The petitioner herein filed a transfer Civil Miscellaneous Petition before this Court in Tr.C.M.P.No.263 of 2012 seeking transfer of the same to the Family Court, Puducherry for being tried along with the maintenance case in M.C.No.9 of 2012. In the said Transfer Civil Miscellaneous Petition, by consent of both parties, an order came to be passed transferring the above said H.M.O.P.No.35 of 2011 from the file of Sub-Court, Ponneri to the file of Sub-Court, Tambaram

whereupon it came to be re-numbered as H.M.O.P.No.407 of 2012 on the file of the Sub-Court, Tambaram. The same shows that the attempt made by the petitioner herein to have the H.M.O.P filed by her husband transferred to Puducherry to be tried along with the criminal case for maintenance was not successful and by mutual consent, the parties chose the jurisdiction of Sub-Court, Tambaram. Now it is the second attempt made by the petitioner to have the same transferred from Sub-Court, Tambaram to Family Court, Puducherry after filing a petition for restitution of conjugal rights on the file of Family Court, Puducherry as H.M.O.P.No.102 of 2016. Though Section 19(iii-a) is intended to confer a benefit on the wife, such benevolent provision cannot be permitted to be misused. In the absence of bonafide, the benefit need not be conferred on the wife.

4. Learned counsel for the petitioner submits that since the respondent has not paid the travelling expenses, as directed by this Court and since the Sub-Court, Tambaram, allowed an application for amendment to include the ground of desertion, she had to seek the transfer of the H.M.O.P from Sub-Court, Tambaram to Family Court, Puducherry.

5. It is an admitted fact that the amendment application came to be allowed by an ex parte order as the petitioner herein did not appear in the amendment application to resist it. It is also an admitted fact that the petitioner has filed an application for setting aside the ex parte order passed in the amendment application. So far as the non-payment of the travelling allowance is concerned, it is the contention of the learned counsel for the respondent that since the petitioner did not appear before the Sub-Court, Tambaram, the travelling allowances were not paid on those dates on which she was absent. In any event, if at all the petitioner is not paid the travelling allowance for the date on which she attended the Court at Tambaram, she could have very well filed an application in the Sub-Court, Tambaram.

6. Learned counsel for the petitioner submits that such application came to be filed by the petitioner before the Sub-Court, Tambaram as I.A.No.636 of 2015. It is the contention of the learned counsel for the petitioner that the said interlocutory application was allowed, but he is not in a position to inform the date on which such an application was allowed. He is also not in a position to state what was the amount directed to be paid. On the other hand, learned counsel for the respondent submits that the application is still pending. The disputed facts cannot be considered in a transfer Civil Miscellaneous Petition. If at all the petitioner is able to get such an order, she could very well execute the said order and till the compliance of such order, she could get the proceedings before the Sub-Court, Tambaram stayed.

7. On the other hand, the very fact that the petitioner, after a lapse of 5 years from the date of filing of the H.M.O.P by the husband, has chosen to file H.M.O.P for restitution of conjugal rights on the file of the Family Court, Puducherry and sought the transfer of the H.M.O.P, which was earlier transferred from Sub-Court, Ponneri to Sub-Court, Tambaram based on the consent of the parties, will show lack of bonafide in the present petition seeking transfer. Hence, this Court comes to the conclusion that the Transfer Civil Miscellaneous Petition deserves to be dismissed.

Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

gpa

To

1. The Sub-Court  
Tambaram
2. The Family Court,  
Puducherry

1 cc to Dr.R. Sampathkumar, Advocate, Sr. 24762

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GJ II (CO)  
kk 5/5

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