

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Tr.C.M.P.No.216 of 2016

J. RAMAMOORTHY

... Petitioner/Respondent

versus

UMA MAHESWARI

.... Respondent/Petitioner

Transfer Petition filed to withdraw the case in F.C.O.P.NO.61 OF 2015 on the file of Family Court, Kancheepuram District at Chengalpattu and transfer the same to the principal Family Court Chennai.

For Petitioner : Mr.P.Anand

For Respondent : Mr.S.Natanarajan

O R D E R

The respondent in F.C.O.P.No.61 of 2015, on the file of the Subordinate Court, at Chengalpat is the petitioner in this transfer petition.

2. The proceedings in F.C.O.P.No.61 of 2015 was instituted by the respondent invoking Section 12(1)(c) of the Hindu Marriage Act. The respondent alleged that the petitioner played fraud and got the marriage registered before the District Registrar, Chennai on 28.3.2014. The respondent therefore wanted a decree annulling the marriage. The petitioner opposed the matrimonial proceedings on the ground that marriage was solemnized with the consent of the respondent.

3. The petitioner during the midst of trial, filed this application for transfer, on the ground that the Presiding Officer was showing bias against him and as such, the matter requires transfer to another Court.

4. The learned counsel for the petitioner contended that the learned Judge, Family Court, Kanchipuram, committed certain fundamental mistakes during the course of trial. According to the learned counsel, the learned trial Judge was expected to

send the parties to conciliation. The learned trial Judge without making an attempt to settle the matter, straightaway posted the proceedings for evidence. The learned counsel further contended that the questions put by the counsel to the respondent was disallowed by the trial Judge on multiple occasions. The petitioner has, therefore, reasons to believe that he would not get justice in case the matter is taken up by the present Presiding officer.

5. The learned counsel for the respondent contended that the petitioner wanted to drag on the proceedings and the present transfer petition is one among such attempt. According to the learned counsel, the learned trial Judge was conducting the proceedings without showing partiality. The so called reasons are all alleged for the purpose of making out a case for transfer.

6. The proceedings in H.M.O.P.No.83/2014 was instituted by the respondent. The respondent wanted a decree of nullity of marriage. The petitioner opposed the matrimonial proceedings. The petitioner cross examined the witnesses on the side of the respondent. The matter is now posted for recording the evidence on the side of the petitioner.

7. The petitioner has given certain instances to demonstrate that he would not get justice from the Presiding Officer, Family Court, Kanchipuram. The first reason is failure on the part of the learned Judge to send the parties to conciliation. The fact that there was no attempt made by the trial Judge to settle the matter alone cannot be a reason to transfer the matrimonial proceedings. In fact, the petitioner has not made a request at any point of time before the Trial Court to send the parties to mediation or conciliation. The matrimonial proceedings cannot therefore be transferred on this ground alone. The second ground relates to disallowing certain questions by the learned trial Judge. The learned trial Judge appears to be a participating Judge. The fact that the learned Trial Judge has interfered in the process of recording evidence by stating that certain questions are irrelevant, also cannot be a reason for transfer. The petitioner could have very well requested the learned trial Judge to record the evidence by way of question and answer. In case the matter is transferred, on grounds like intervention of the trial Judge during the course of recording evidence, the Presiding Officers would then be treated as silent spectators. The Presiding Officers are expected to participate in the process of trial. It is for the trial Judge to decide which question should be permitted and which question should not be permitted. In case, parties have any grievance with regard to the course of conduct adopted by the Presiding Officer in the matter of recording evidence, it is always open to them to approach the very same court or before the higher courts.

Admittedly, no such request was made by the petitioner. None of the reasons given in the affidavit filed in support of the transfer petition would justify transfer of the matrimonial proceeding. I am therefore of the view that there is absolutely no merit in the contention taken by the petitioner.

8. Since certain allegations were made against the Presiding Officer, I have directed the Registry to obtain the remarks from the learned Judge, Family Court, Kanchipuram. The report submitted by the learned Judge indicates that P.W.1 was examined on 31 August 2015. The petitioner cross examined witnesses on 15 September 2015, 25 September 2015, 1 October 2015, 29 October 2015 and 18 November 2015. The learned trial Judge permitted the petitioner to continue with the cross examination on all these days. Thereafter, proof affidavit of the petitioner was filed on 4 February 2016. The learned counsel for the respondent cross examined the petitioner on 11 February 2016. While so, the petitioner made a request on 9 March 2016 to produce the details of conversation with the respondent through phone. The request was negatived by the Trial Court. It was only thereafter, the petitioner filed the transfer petition. The fact that the Trial Court disallowed the request made to mark a document also cannot be a reason for transfer. I am therefore of the view that there is absolutely no merit in the transfer petition.

9. In the upshot, I dismiss the transfer petition. No costs. Consequently, C.M.P.No.6233 of 2016 is also dismissed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1.The Family Court,
Kancheepuram District
at Chengalpattu.

2.The Family Court,
Chennai.

+1cc to Mr.P.Anand, Advocate, S.R.No.58339

+1cc to Mr.S.Natanarajan, Advocate, S.R.No.58463

Tr.C.M.P.No.216 of 2016

GJ II(CO)

CA(15/11/2016)