

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.476 of 2016
and C.M.P.No.13031 of 2016

R.Logeswari ... Petitioner

vs.

K.Arul Jothi ... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure praying to withdraw the HMOP No.4849 of 2014 pending on the file of the Principal Family Court, Chennai and to transfer the same to the Principal Sub Court at Trichy.

For Petitioner : Mr.P.Sesubalan

For Respondent : Ms.P.J.Anitha

ORDER

The petitioner/wife has filed this petition seeking to withdraw the HMOP No.4849 of 2014 pending on the file of the Principal Family Court, Chennai and to transfer the same to the Principal Sub Court at Trichy.

2. As lot leniency and consideration is shown to women while deciding transfer petitions, this Court is bombarded with transfer petitions filed by women in matrimonial proceedings, seeking transfer to their home town. The leniency found favour with women because it was always an uneducated helpless rustic woman, was imagined to be the petitioner. Now, the time has changed.

3. The case of the petitioner is as follows:

The petitioner/wife has filed HMOP No.4849 of 2014 under Section 12(1)(c) of the Hindu Marriage Act, 1955 to annul the marriage solemnized between her and the respondent/husband on 01.06.2014 on the ground that the marriage was not consummated. It is stated that since the petitioner/wife was working at Chennai at the time of filing the above petition, the same was filed before the Principal Family Court at Chennai. However, at present she has left that job and went to Trichy to live with her parents. It is also

stated that she has filed the proof affidavit long back, despite which, there is no progress in the case till date. Hence the present petition seeking transfer of the said HMOP No.4849 of 2014 pending on the file of the Principal Family Court, Chennai to Principal Sub Court at Trichy.

4. The respondent/husband has filed his counter denying the fact that the petitioner/wife has shifted to Trichy. The delay in proceeding with the case is because of the reason that there was no Presiding Officer till recently. Accordingly, he would pray for dismissal of the petition.

5. The question for consideration is that whether the HMOP No.4849 of 2014 filed by the petitioner/wife before the Principal Family Court, Chennai has to be transferred to Principal Sub Court, Trichy as prayed for by her?

6. Heard both sides.

7. From the perusal of the affidavits filed in support of both the parties, it is evident that the above petition was filed in the year 2014 and the pleadings are complete. The petitioner/wife has also filed her proof affidavit. Thereafter for want of Presiding Officer, the matter has been adjourned time and again. It is now stated that the Presiding Officer has taken charge and that there is no impediment for proceeding with the trial. Further, it is the petitioner/wife who had filed the petition in the Principal Family Court, Chennai and now she herself is seeking for a transfer to Trichy due to her personal inconvenience.

8. The burden is on the person seeking a transfer to prove the Court that if the proceedings are not transferred then she would suffer irreparable injustice on the merits of the case. Even with respect to personal life it is for the wife/petitioner to prove the risk of loss of job, health or safety issues. Even then, it should be established that such risks are irreparable in terms of monetary terms and other factors. Not only the woman has the burden of proof of her inconvenience but also has the burden of proving that the husband/respondent would not be put to such prejudices. Unless the double burden is discharged, the wife/petitioner cannot succeed in getting a transfer.

9. The Hon'ble Supreme Court time and again has held that "if the wife claims a threat to her life and she cannot commute, strong

proof is required to be shown and merely by stating fear to her life the Court will not be inclined to transfer the petition to the place of her choice".

10. Insofar as the respondent/husband is concerned, in the present case, he is employed in Chennai and it would be difficult for him to go to Trichy for each and every hearing. It is understandable why transfer petitions be ordered in favour of wife without critically assessing the term 'forum conveniens'. Forum conveniens is where a fair trial can be conducted and Court having jurisdiction. Admittedly, the petitioner/wife had resigned her job from IT industry and joined her parents at Trichy. She is educated and having economic independence and has no difficulty for her to travel to Chennai on the date of hearing alone, except raising the usual plea of travelling alone, rising incidents of violence against women and accompaniment by another person, etc.

7. Considering the aforesaid facts and circumstances of the case and the stage of the petition, I am not inclined to transfer the HMOP No.4849 of 2014 pending on the file of the Principal Family Court, Chennai to the Principal Sub Court, Trichy. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. However, the learned Principal Judge, Family Court, Chennai is directed to dispose of the above petition in a time bound manner. Further as the petition is filed by the petitioner/wife for nullity of the marriage, within a year of marriage, the learned Principal Judge, Family Court, Chennai shall complete the trial on a day to day basis and dispose of the same on or before 30.04.2017. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Principal Judge, Family Court, Chennai

1 cc t o M/s.P.J.Anitha, Advocate Sr.74135

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