



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.287 of 2015

and

M.P(MD)No.1 of 2015

B.Kavitha

... Petitioner/Respondent

vs.

Chandra Mohan

... Respondent/Petitioner

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the proceedings in HMOP No.85/2015 on the file of the Sub Court, Aruppukottai, and transfer the same to the file of the Learned Family Court, Madurai, for adjudication.

(Prayer amended as per the order dated 08.12.2015 in MP.No.2 of 2015 in TR.CMP.No.287 of 2015)

For Petitioner : Mr.K.Samidurai

For Respondent : M/s.Polax Legal Solutions

ORDER

The marriage between the petitioner and the respondent was solemnized on 28.08.2006 as per the Hindu rites and customs and due to the strained relationship between the parties, they are living separately. The respondent is now working at Singapore and the petitioner is residing at Madurai. The respondent filed HMOP.No.85 of 2015 for divorce, which is pending before the Sub Court, Aruppukottai. The petitioner filed a maintenance case in M.C.No.68 of 2015 and also filed HMOP.No.85 of 2015 for restitution of conjugal rights and both the petitions are pending before the Family Court, Madurai.

2.The learned counsel for the petitioner argued that the petitioner is unemployed and dependant on her parents. The petitioner's father is a retired employee and has no other sources of income and maintaining the entire family with his meagre amount of pension. The respondent is not paying any maintenance and the petitioner has no other sources of income and therefore she is unable to defend the case by travelling from Madurai to



3.The learned counsel for the respondent opposed the contention of the petitioner by stating that the petitioner is living in Madurai and Aruppukotai is not far away and she can very well defend the case at Aruppukottai.

4.Such a contention raised by the learned counsel for the respondent cannot be considered due to the facts and circumstances of this case that the respondent is now working in Singapore and it makes no difference as far as the respondent is concerned.

5.The principles with regard to transfer petitions, more specifically, in the matters of matrimonial cases, are in favour of women and the decisions of the High Court of Madras, in the following cases interpreting Section 19(iii)(a) of the Hindu Marriage Act, 1955, also confirm that position:-

(i)The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

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.'

(ii)In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments of the Hon'ble Supreme Court:-

'16.In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

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In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of



money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

(iii) In a decision made in TR.CMP(MD)No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

''18.It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.''

6.In view of the above pronouncements, this Court is of the view that the case of the petitioner deserves to be considered. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and HMOP No.85/2015 on the file of the Sub Court, Aruppukottai, is ordered to be transferred to the Family Court, Madurai, forthwith. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

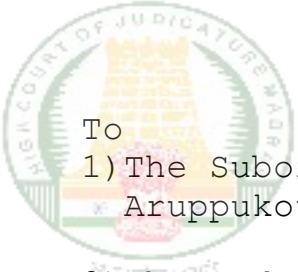
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Assistant Registrar(co)

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Sub Assistant Registrar



To

1) The Subordinate Judge,
Aruppukottai.

2) The Judge,

Family Court, Madurai.

+1cc to M/s. Polax Legar Solutions, SR.No.62176

nbi

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