



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P(MD)No.360 of 2015
and M.P(MD)No.1 of 2015

Anbukani

... Petitioner

Vs.

Mohan

... Respondent

PRAYER:Transfer Civil Miscellaneous Petition filed under Section 24 to withdraw the H.M.O.P.No.296 of 2015 on the file of the Sub Court, Madurai (Melur Camp) and transfer and try along with H.M.O.P.No.135 of 2015 on the file of the Sub Court, Devakottai.

For Petitioner : Mr.J.Anandkumar

For Respondent : Mr.C.Joseph Sathianeson

O R D E R

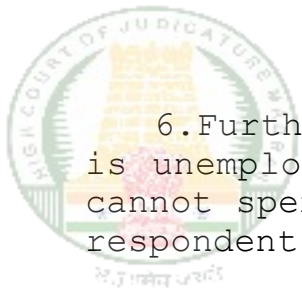
The Transfer Civil Miscellaneous Petition is filed to withdraw and transfer the petition in H.M.O.P.No.296 of 2015 on the file of the Sub Court, Madurai (Melur Camp) to Sub Court, Devakottai and try along with H.M.O.P.No.135 of 2015.

2.The marriage between the petitioner and the respondent was solemnized on 13.12.2007 as per Hindu Rights and Customs.

3.The allegations of the petitioner is that the respondent is used to beat her in drunken mode and harassed frequently. Therefore, she left the matrimonial home and now residing in her parent's house.

4.The contention of the petitioner is that she has filed a petition in H.M.O.P.No.135 of 2015 for restitution of conjugal rights before the Sub Court, Devakottai.

5.Per contra, the respondent filed a petition in H.M.O.P.No.296 of 2015 for divorce before the Sub Court, Madurai, Melur Camp.



6. Further, the petitioner stated that she is having a son and is unemployed and not having sources of income and therefore, she cannot spend and travel to defend the case of divorce filed by the respondent.

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7. The learned appearing for the respondent opposing the petition by stating that the respondent is not responsible for leaving of the matrimonial home and the petitioner at her own volition, deserted the respondent and living with her parents along with her son and therefore, leniency has not been shown to the petitioner and the petition is to be dismissed.

8. The respective counsels both for the petitioner and the respondent are heard.

9. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well settled through the decisions of the High Court of Madras, in the following cases:-

(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:-

'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.

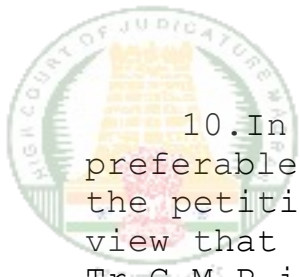
In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

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



10. In view of the above judgments, the place of the wife is preferable and in the present case, the circumstances narrated by the petitioner deserve consideration. Hence, this court is of the view that the petition deserves to be allowed and accordingly, the Tr.C.M.P. is allowed and H.M.O.P.No.296 of 2015 pending before the Sub Court, Madurai at Melur Camp is ordered to be transferred to Sub Court, Devakottai for having joint trial with H.M.O.P.No.135 of 2015 forthwith. Consequently, connected M.P. is closed. No costs.

Sd/-

Assistant Registrar(writs)

/True copy/

Sub Assistant Registrar

To

1. The Sub Court, Madurai (Melur Camp).

2. The Sub Court, Devakottai.

+1cc to Mr.C.Joseph Sathaneson, Advocate SR.o.63514

+1cc to Mr.J.Anandkumar, Advocate SR.No.63799

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25.10.2016