



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.465 of 2015

and

M.P(MD)No.1 of 2015

Saranya

... Petitioner

vs.

A.Anbaraja

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.43 of 2015 from the file of Honourable Subordinate Judge Court, Kulithalai, and transfer the same to Sub Court Dindigul.

For Petitioner : Mr.J.Lawrance

For Respondent : Mr.M.Suresh

ORDER

The marriage between the petitioner and the respondent was solemnized on 12.11.2010 as per the Hindu rites and customs and due to the strained relationship between the parties, they are living separately. Both the petitioner and the respondent are working as Teachers. The petitioner is working at Dindigul and the respondent is working at Kulithalai. The present petition is filed by the petitioner contenting that there is a complaint pending before the All Women Police Station, Dindigul, explaining the cruelty and torture meted out to her by the respondent and further she is having a three year old male child and now she is living along with her parents at Dindigul. Therefore, she is not in a position to travel from Dindigul to Kulithalai, by leaving the child.

2.The learned counsel for the respondent opposed the contention of the petitioner by stating that the petitioner is also working as a Teacher and having sources of income and she can very well travel from Dindigul to Kulithalai to contest the case.

3.The fact remains that the petitioner is living with her parents and has to look after the male child aged about 3 years.



Under such circumstances, transfer of the case from Kulithalai to Dindigul, alone is preferable.

4. 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.

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.



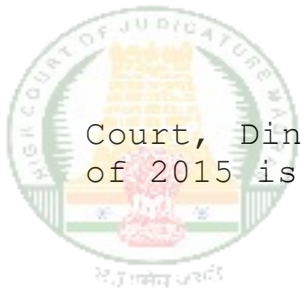
In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur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

5. Considering the arguments and the counter arguments of the learned counsels both for the petitioner and the respondent and 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 H.N.O.P.NO.43 of 2015 on the file of the Subordinate Court Court, Kulithalai, is ordered to be transferred to the Family



Court, Dindigul, forthwith. No costs. Consequently, M.P (MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CO)

/True copy/

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Sub Assistant Registrar

To

1) The Judge, Subordinate Court, Kulithalai.

2) The Judge, Family Court, Dindigul.

+1 cc to M/s. J. Lawrance, Advocate in SR.No. 62160

+1 cc to M/s. M. Suresh, Advocate in SR.No. 62149

NBI

CSL/SS-2/30.11.2016: 4P/5C

TR.CMP (MD) No.465 of 2015
20.10.2016