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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P(MD)No.475 of 2015
and
M.P(MD)No.1 of 2015

N.Shanmugapriya ... Petitioner

Vs.

K.Rajini Narayanan ... Respondent

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the case on the file of the learned III-Additional Sub Judge, Madurai, in H.M.O.P.No.95 of 2015 and transfer the same to the learned Family Court Judge, Srivilliputhur, Virudhunagar District.

For Petitioner : Mr.C.R.Janarthanan

For Respondent : Mr.M.Solaisamy

ORDER

The present petition is filed seeking to withdraw the case before the III-Additional Sub Court, Madurai, in H.M.O.P.No.95 of 2015 and transfer the same to the Family Court, Srivilliputhur, Virudhunagar District.

2.The marriage between the petitioner and respondent was solemnized on 12.09.2010, as per Hindu Rites and Customs in Srivilliputhur. The petitioner seeks transfer of H.M.O.P.No.95 of 2015 pending before the III-Additional Sub Court, Madurai.

3.The contention of the petitioner is that the respondent is working at Chennai and filed a divorce petition in H.M.O.P.No.95 of 2015 before the III Additional Sub Court, Madurai, only with an idea to harass her and he is not residing in Madurai. This apart, she is unemployed and she has to look after her minor son. Further, the petitioner is living with her parents with their support and she has no income of her own and she is not in a position to meet out the expenditure to adjudicate the case at Madurai.

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4.The learned counsel for the respondent opposes by stating that the petitioner is capable of travelling and she is in a position to conduct the case at Madurai.

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

6.Considering the arguments of the respective counsels both for the petitioner and respondent, this Court is of the view that the respondent is working at Chennai and it make less difference for him to conduct the case either in Madurai or in Srivilliputhur. Further, 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:-

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> ''16.In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to

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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.''

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7.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.

8.Considering the facts and circumstances of the case, this Court is inclined to consider the case of the petitioner and accordingly, this transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.95 of 2015 pending before the III-Additional Sub Court, Madurai is ordered to be transferred to the file of the Family Court, Srivilliputhur, forthwith. No costs. Consequently, connected Miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
1.The III-Additional Sub Judge,
Madurai.

2.The Judge, Family Court , Srivilliputhur.

+1 cc to MR.C.R.JANARTHANAN, Advocate SR.No.62721

TR.C.M.P.(MD)No.475 of 2015
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