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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.11.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P(MD)Nos.15 and 16 of 2016
and C.M.P(MD)Nos.251 and 252 of 2016

Tr.C.M.P. (MD)No.15 of 2016:

Santhanalakshmi ... Petitioner/Respondent

Vs.

Kalidoss ... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the guardian petition in G.W.O.P.No.107 of 2015 on the file of the Principal District Judge, Dindigul and transfer the same to the file of the Family Court, Madurai.

For Petitioner : Mr.P.Suresh Kumar
For Respondent : Mr.M.S.Suresh Kumar

Tr.C.M.P. (MD)No.16 of 2016:

Santhanalakshmi ...Petitioner/Respondent

Vs.

Kalidoss ...Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the petition in H.M.O.P.No.71 of 2015 on the file of the Family Court, Dindigul to transfer the same to the file of the Family Court, Madurai.

For Petitioner : Mr.P.Suresh Kumar
For Respondent : Mr.M.S.Suresh Kumar

COMMON ORDER

The Transfer Civil Miscellaneous Petition in Tr.C.M.P. (MD) No.15 of 2016 is filed to withdraw the guardian petition in G.W.O.P.No.107 of 2015 on the file of the Principal District Judge, Dindigul and transfer the same to the file of the Family Court, Madurai.

2.The Transfer Civil Miscellaneous Petition in Tr.C.M.P. (MD) No.16 of 2016 is filed to withdraw the petition in H.M.O.P.No.71 of 2015 on the file of the Family Court, Dindigul to transfer the same to the file of the Family Court, Madurai.

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3.The Marriage between the petitioner and the respondent was solemnized on 24.08.2001 as per Hindu Rights and Customs and out of the wedlock two children were born and both the minor children are now under the custody of the petitioner / wife. The petitioner / wife is now residing at Madurai along with her



parents.

4.The contention of the petitioner is that she is having two minor children and both are school going and now living with the support of her parents. Hence, she will not be in a position to travel to defend the case filed by the respondent seeking divorce in H.M.O.P.No.71 of 2015 filed by the respondent seeking divorce. The petitioner filed a petition seeking maintenance which is pending before the Family Court, Madurai in M.C.No.193 of 2015. This apart, the respondent filed G.W.O.P.No.107 of 2015 before the Principal District Court, Dindigul, seeking custody of two minor children.

5.The learned counsel appearing for the respondent vehemently opposed the transfer petition on the ground that the petitioner / wife is also employed and she has got sufficient income to spend and travel to defend the case filed by the respondent in G.W.O.P.No.107 of 2015 at Dindigul. Further he contended that the petitioner filed the petition seeking maintenance after filing of the two petitions by the respondent / husband and therefore, the later petition is to be transferred along with the subsequent petition. Such an argument deserves no consideration in view of the amendment made in Section 19(iii)(a) of Hindu Marriage Act, which was interpreted by the Hon'ble Division Bench and the same is extracted hereunder:

(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

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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 resides.'

6. 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 pleased to consider the transfer petitions filed by the petitioner and accordingly transfer petitions are allowed and G.W.O.P.No.107 of 2015 pending before Principal District Court, Dindigul, and H.M.O.P.No.71 of 2015 pending before the Family Court, Dindigul stand transferred to the Family Court, Madurai to



be tried along with M.C.No.193 of 2015. No costs. Consequently, connected C.M.PS.are closed.

Sd/-

Assistant Registrar[Records]

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Sub Assistant Registrar/-

To

1.The Principal District Court, Dindigul.

2.The Family Court, Dindigul.

3.The Family Court, Madurai.

+lcc to M.S.Sureshkumar, Advocate, SR.72248.

NBJ

KK-GSV-SV-19.01.17-4P-5C

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