



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

Coram:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

Tr.C.M.P. (MD) .No.152 of 2016

and

C.M.P. (MD) No.2610 of 2016

D.Bavya

.. Petitioner

Vs.

R.Prem

.. Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw the H.M.O.P.NO.1 of 2016 pending on the file of Sub Court, Melur, Madurai District and transfer to the file of Sub Court, Tambaram, Kanchipuram District to be tried along with H.M.O.P.No.105 of 2016 for being disposed of on merits.

For Petitioner : Mr.K.Kumaravel
For Respondent : Mr.V.Kathirvel
Senior Counsel
for Mr.K.Prabhu

O R D E R

The present Transfer petition is filed seeking transfer of H.M.O.P.No.1 of 2016 from the Sub Court, Melur, Madurai District to the file of the Sub Court, Tambaram, Kanchipuram District to be tried along with H.M.O.P.No.105 of 2016 for being disposed of on merits.

2. The respective counsels for both parties are heard.

3. The marriage between the petitioner and the respondent was solemnized on 12.06.2013 as per Hindu rights and customs. Out of the wedlock, a female child born on 17.06.2014 and the child is under the custody of the petitioner.

4.The contention of the petitioner is that the respondent filed a petition for divorce on the ground of cruelty against the petitioner in H.M.O.P.No.1 of 2016 before the Subcourt, Melur, Madurai District. Further, the petitioner filed a petition for restitution of conjugal rights before the Subcourt, Tambaram,



Kanchipuram District in H.M.O.P.No.105 of 2016. The case pending before the Sub Court, Melur, Madurai District may be transferred to the Sub Court at Tambaram, Kanchirapuram District to be tried along with H.M.O.P.No.105 of 2016.

5. The learned counsel for the respondent opposed the petition by stating that the petitioner left the matrimonial home on her own volition and not at the instance of the respondent and prays for dismissal of this petition.

6. It is an admitted fact that the petitioner as well as the respondent are working at Chennai and therefore, the Subcourt, Tambaram, Kanchipuram District is more convenient to the parties.

7. 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 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."

8. 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.

9. In the result, this petition is allowed with the following directions:

<https://hcservices.ecourts.gov.in/hcse/>
The Subordinate Judge, Melur, Madurai District is directed to transmit the records in respect of



H.M.O.P.NO.1 of 2016 to the Sub Court, Tambaram, Kanchipuram District within a period of two weeks from the date of receipt of copy of this order.

ii. The learned Subordinate Judge, Tambaram, Kanchipuram District is directed to try both H.M.O.P.No. 1 of 2016 and H.M.O.P.NO. 105 of 2016 together and dispose of the same as expeditiously as possible.

No costs. Consequently, connected M.P.(MD) No.2610 of 2016 is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Tambaram, Kanchipuram District.
2. The Subordinate Judge, Melur, Madurai District.

+1 cc to M/s.K.Prabhu, Advocate in SR.No. 67612

+1 cc to M/s.K.Kumaravel, Advocate in SR.No. 66770

CM

CSL/SKS-RR/07.12.2016: 4P/5C

Tr.C.M.P. (MD) .No.152 of 2016

C.M.P.No.2610 of 2016

08.11.2016