WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.160 of 2016
and
C.M.P(MD)No.2809 of 2016

Jeevitha ... Petitioner

vs.

A.Raj Kumar ... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to order withdrawal of the HMOP No.103 of 2014 on the file of Court of Subordinate Judge, Perambalur, and transfer the same to the file of Sub-Court, Thuraiyur.

For Petitioner : Mr.S.Kadarkarai
For Respondent : Mr.S.Anand Chandrasekar

ORDER

The marriage between the petitioner and the respondent was solemnized on 01.07.2001, as per the Hindu rites and customs. Out of the wedlock, two female children and one male child were born. The contention of the petitioner is that the respondent is employed as a driver in a private school and earning Rs.30,000/- per month. The petitioner became pregnant for the 4th time and was hesitating to have the 4th child and requested the respondent for abortion. But, the respondent with reluctance agreed for the same and she aborted the child and went to her parents' house, for a couple of months to improve her health condition. At that point of time, the respondent filed HMOP.No.103 of 2014 before the Sub Court, Perambalur, for divorce, by making unnecessary allegations against the petitioner. Hence, the present petition for transfer.

2.The petitioner further states that she is unemployed and not having any independent sources of income. Further, her daughters are aged about 12 and 10 years respectively and the son is aged about 6 years. Now, she and three children are living with the support of her parents at Kirambur Village, Thuraiyur Taluk, Trichy District.

https://hcservices.ecourts.gov.in/hcservices/

3.The contention of the respondent is that the allegations raised by the petitioner are false and he filed the petition for divorce, on the ground of cruelty. Further, the respondent states that the petitioner is very well in a position to attend the case at Perambalur and therefore, this petition is liable to be dismissed.

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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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.

5.Considering the facts and circumstances of this case 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 HMOP No.103 of 2014 on the file of the Sub Court, Perambalur, is ordered to be transferred to the Sub Court, Thuraiyur, forthwith. No costs. Consequently, C.M.P(MD)No.2809 of 2016 is closed.

sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

nbi
To
1)The Judge,Subordinate Court, Perambalur.

2)The Judge,Subordinate Court, Thuraiyur.

+1CC to Mr.Sarvabhauman Associates, Advocate Sr.No.63747
+1CC to Mr.G.Vasudevan, Advocate Sr.No.63683

GJM/SS2/28.11.16-3p-5C

https://hcservices.ecourts.gov.in/hcservices/