



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.167 of 2016

and

C.M.P(MD)No.3047 of 2016

Mrs.K.Keerthana

... Petitioner

vs.

M.Vinoth

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the case in H.M.O.P.No.11of 2016 pending on the file of the first Additional Subordinate Judge, Villupuram District to the file of the Principal Subordinate Judge, Trichirappalli District.

For Petitioner : Mr.R.Suresh Kumar

For Respondent : No appearance

ORDER

The case of the petitioner is that the marriage between the petitioner and the respondent was solemnized on 23.01.2015 at Tanjore as per the Hindu customs and rituals. Due to the strained relationship between the parties, the petitioner left the matrimonial home and living with her parents. The respondent filed H.M.O.P.No.11 of 2016 seeking divorce before the First Additional Subordinate Judge, Villupuram. The contention of the petitioner is that now she is studying in Pudukkottai District and her residence is at Tanjore. The distance between Thanjavur and Villupuram is nearly 175 Kilometres and she has to travel about five hours to reach the Court at Villupuram. The petitioner is now aged about 21 years and therefore, she is not in a position to travel and attend the Court at Villupuram. Further, she is depending on her parents and cannot met out the expenses to defend the case of divorce filed by the respondent before the Sub Court, Villupuram.

2.Despite service of notice and his name being printed in the cause list, there is no representation on behalf of the respondent either in person or through pleader and therefore, this Court is constrained to pass orders on merits.



3. 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.

4.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 H.M.O.P.No.11 of 2016 pending on the file of the First Additional Subordinate Judge, Villupuram District, is ordered to be transferred to the Family Court, Tiruchirappalli, forthwith. No costs. Consequently, connected civil miscellaneous petition is closed. Accordingly, this Transfer Civil Miscellaneous Petition is allowed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub-Assistant Registrar

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To

1)First Additional Subordinate Judge,
Villupuram District.

2)The Judge, Family Court, Tiruchirappalli.

+1CC to Mr.R.Suresh Kumar, Advocate Sr.No.70555

GJM/SS2/15.12.16-3p-4C

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