



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.10.2016

Coram:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.(MD).No.173 of 2016
and C.M.P.(MD) No.3111 of 2016

A.Beaulah Darthi

.. Petitioner

Vs.

A.Anthony

.. Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw the I.D.O.P.No.61 of 2014 pending on the file of the Principal District Judge, Pudukkottai and to transfer the same to the file of District Judge, Nagapattinam.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.J.Anandakumar

O R D E R

This Transfer Civil Miscellaneous Petition is filed seeking for transfer of I.D.O.P.No.61 of 2014 from the file of the Principal District Judge, Pudukkottai to the file of District Judge, Nagapattinam.

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

3.The petitioner is the wife of the respondent. The marriage between them was solemnized on 08.09.2011 as per Christian rights and customs. Due to strained relationship between the parties, the respondent filed I.D.O.P.No.61 of 2016 for divorce before the learned Principal District Judge, Pudukkottai. The petitioner came with the present Transfer Civil Miscellaneous Petition by pleading that she is living with her aged parents, who are suffering from diabetics and other ailments, at Neermulai Village, Nagapattinam District and she is also taking treatment for infertility.

4. The learned counsel for the petitioner would further submit that the respondent/husband is working as Teacher in St.Antony Higher Secondary School, and used to come to Pudukkottai every day. Hence, no prejudice would be caused to the respondent by transferring this petition to the court at Nagapattinam. The petitioner further pleaded that she is suffering both financially and physically and she is not in a position to attend frequent hearings at Pudukkottai Court.

5. Per contra, the learned counsel for the respondent vehemently opposed by stating that this petition is not maintainable on the ground that Pudukkottai falls under the jurisdiction of Madurai Bench of Madras High Court and Nagapattinam District falls under the territorial jurisdiction of the Principal Seat at Madras. Further, he would contend that the



only ground raised by the petitioner is financial crisis and the respondent is ready to bear travelling expenses to the petitioner and therefore, prays for dismissal of this petition.

6. In respect of jurisdiction, the Hon'ble Division Bench of this Court elaborately considered in the case of E.Mary Oliviya Vs. E.Jsohua Milton in 2008(7) MLJ 1012. The relevant paragraphs are extracted hereunder:

27. In view of the above conclusion, the concept of cause of action or the "reason for filing" can be examined to find out where such an application can be filed. If a litigant seeks transfer of a suit from a Court at Coimbatore to a Court at Madurai, it can be reasonably construed that the cause of action or the reason for seeking transfer arises partly within the territorial jurisdiction of Principal Bench and partly within the territorial jurisdiction of the Permanent Bench and he can file the petition at either place. Where a party wants a suit, to be transferred to a particular place, either because such party is a resident of such place or may be because such place would be more convenient as most of the witnesses are from such places, it can be said that cause of action or the reason for filing a transfer petition has atleast arisen partially in such place and therefore, the petition for transfer can be filed as per convenience of the litigant seeking transfer.

33. An apprehension was expressed in the above decision that if it is held that both the Benches may have jurisdiction, there is possibility of conflicting decisions. We do not think such an apprehension can be said to be reasonable. A transfer petition when taken on the juridical side, under, Section 24 C.P.C is required to be disposed of only after giving opportunity of hearing of both parties.

36. It is necessary to add a clarificatory note. The proviso, to the Presidential Order should not be construed as conferring a new power on the Chief Justice to direct that any case or class of cases rising in any of the district within the jurisdiction of the Permanent Bench at Madurai shall be heard in the Principal Bench of Madras. It only reiterates the pre-existing powers of the Chief Justice for distribution of the business of the High Court. To put it differently, the Chief Justice is the Master of the roaster. He has absolute power in the matter of allocation of work. The proviso had been included to reaffirm such position test it may be construed that the transfer of the Bench at Madurai all the matters arising within such districts have to be heard only at Madurai and cannot be heard at Madras. The



proviso also does not affect in any manner the plenary power of the Chief Justice to allocate any case to any Judge.

7. In view of the above judgment of the Hon'ble Division Bench, this Bench has got jurisdiction to entertain the present Transfer Petition. The first contention of the learned counsel for the respondent deserves to be rejected.

8. In respect of other contention that he is ready to pay the travelling expenses cannot be accepted and it will create unnecessary dispute between the parties, who are none other than the husband and wife.

9. In respect of transfer of matrimonial cases, this Court has taken a consistent view that the place of the wife is to be preferred. Hence, the circumstances narrated by the petitioner deserve consideration.

10. Considering the facts and circumstances of the present case on hand, this petition deserves to be considered and accordingly, the same is allowed with the following directions:

i) The learned Principal District Judge, Pudukkottai, is directed to transmit the entire records in I.D.O.P.No.61 of 2014 to the file of the District Court, Nagapattinam, within a period of two weeks from the date of receipt of copy of this order.

ii) the learned District Judge, Nagapattinam, after obtaining the records on transfer, is directed to dispose of the matter as expeditiously as possible in accordance with law.

No costs. Consequently, connected C.M.P.(MD) No.3111 of 2016 is closed.

Sd/
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

1.The Principal District Judge, Pudukkottai.

2.The District Judge, Nagapattinam.

+1CC to M/S.N.Krishnaveni, Advocate, SR.No. 61908

+1CC to M/S.J.Anandkumar, Advocate, SR.No. 62248

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