



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P(MD)No.35 of 2016
and C.M.P(MD)No.1 of 2016

Arokiyasamy

... Petitioner

Vs.

Rubini Mary

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the case in I.D.O.P.No.46 of 2013 from the District Court of Sivagangai and transfer the same to the First Additional Family Court, Chennai.

For Petitioner : Mr.K.N.Thambi
For Respondents : Mr.P.T.Ramesh Raja

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw the case in I.D.O.P.No.46 of 20013, on the file of the District Court, Sivagangai and transfer the same to the First Additional Family Court, Chennai.

2.The petitioner herein is the husband and the respondent is the wife. The marriage was solemnized between the petitioner and the respondent on 24.05.2010. Due to wedlock, they were blessed with one male child. According to the respondent / wife, the petitioner did not take care of her and their child and he stayed at Chennai. Whenever, she questioned the same, the petitioner used to beat her. Whiles, on 25.12.2012, the petitioner / husband removed the Thali chain and sent her to her parents' home. The respondent / wife filed a petition in I.D.O.P.No.46 of 2013 before the District Court, Sivagangai for restitution of conjugal rights. The petitioner / husband filed a petition in I.D.O.P.No.3381 of 2013 before the Family Court, Chennai for divorce.

3.On 09.07.2015 the petitioner / husband appeared before the District Court, Sivagangai and produced an order of ex parte divorce dated 10.07.2014 in I.D.O.P.No.3381 of 2013 passed by the First Additional Family Court, Chennai.



4.The learned counsel for the respondent / wife submitted that a petition in I.A.No.1556 of 2015 is filed to condone the delay in filing the ex parte order dated 10.07.2014 and the same is pending. The learned counsel also submitted that the respondent / wife is residing at Sivagangai and the distance between the Sivagangai and Chennai is more than 600 kms. and therefore, it is very difficult for the respondent / wife to travel each and every hearing to attend the case. The respondent is depending on her parents for day to day expenses including travel expenses.

5.The case of the petitioner is that the husband filed a petition in I.D.O.P.No.3381 of 2013 before the First Additional Family Court, Chennai. In spite of notice, the wife remained ex parte and therefore, the First Additional Family Court, granted a decree on 10.07.2014 dissolving the marriage. Subsequently, the respondent / wife filed a petition in I.A.No.1156 of 2015 for condoning the delay in filing a petition to set aside ex parte order. The petition in I.D.O.P.No.46 of 2013 filed before the District Judge, Sivagangai for restitution of conjugal rights, the petitioner / husband filed a counter statement on 25.08.2014 and appeared before the said court regularly.

6.The counsel for the petitioner / husband submitted that the respondent / wife with a view to prolonging the litigation, did not appear before the court either in person or through counsel. The learned counsel for the petitioner / husband further submitted that the respondent and her family members are very influential persons and they are threatening the petitioner to obey them in the matter of I.D.O.P.and physically attacked him badly. Under these circumstances, the petitioner is before this Court with the present Transfer Civil Miscellaneous petition.

7.The learned counsel for the respondent / wife submitted that the petitioner / husband has neglected her and her child and leading luxurious life at Chennai. He further submitted that if the case is transferred to Chennai, it will cause prejudice and hardship to the respondent and prayed for the dismissal of this petition.

8.Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials on record.

9.Taking into consideration of facts and circumstances of the case, the petitioner / husband has simply raised allegations against the respondent / wife without any valid particulars, as there is no untoward incidents happened for the petitioner. It is held that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference as held by the Hon'ble Supreme Court in the



judgments reported in **2008(9) SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta) and AIR 2002 SC 396 (Sumita Singh Vs. Kumar Sanjay and another)**. Therefore, I am of the view that the petition filed by the husband is liable to be dismissed.

10. Accordingly, the Transfer Civil Miscellaneous petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Judge, Sivagangai.
- 2.The Judge, First Additional Family Court,
Chennai.

- + 1 CC TO MR.K.N.THAMPI, ADVOCATE IN SR NO. 17497
- + 1 CC TO MR.P.T.RAMESH RAJA, ADVOCATE IN SR NO. 17944

NBJ

TE/NGM-MP/SAR-III : 02/06/2016 : 3P/5C

Tr.C.M.P. (MD) No.35 of 2016
and
C.M.P (MD) No.1 of 2016
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