



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
Tr.C.M.P. (MD) .No.368 of 2016
and C.M.P. (MD) Nos. 9916, 7107 and 10191 of 2016

M.Divya Bharathi

.. Petitioner/Respondent

Vs.

N.Balaji

..Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, praying to withdraw the case in H.M.O.P.No.76 of 2016 on the file of the Sub Court, Sivakasi, and any other court having competent jurisdiction at Sivagangai.

For Petitioner : Mr.N.Anandakumar

For Respondent : Mr.R.R.Kannan

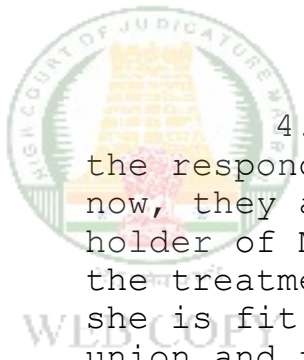
O R D E R

The marriage between the petitioner and the respondent solemnized on 26.01.2015 as per Hindu rights and customs. The petitioner would contend that she is a master decree holder in Engineering and after marriage, she had severe leg pain and thereafter, went for medical treatment. Subsequently on medical examination, it was found that the petitioner is suffering from HODGKINS LYMPHOMA (Blood cancer) and it is in preliminary stage. The petitioner was advised to take continuous treatment.

2. The learned counsel for the petitioner produced the Doctor's certificate issued by Asirvatham Speciality Hospital, which reads as follows:

Mrs. Thivya Bharathi, 24/F k/c of Hodgkins Lymphoma diagnosed on 30.09.2015 and treated with chemotherapy and radiotherapy till 25.04.2016, has no metabolic evidence of disease at present and is fit for family life as far as oncology care is concerned.

3. The learned counsel for the petitioner contended that the Doctor's certificate is unambiguous that the treatment was taken and the petitioner is fit for family life and therefore, this Court is inclined to consider the doctor's certificate produced by the petitioner.



4. The petitioner states that after medical treatment, the respondent had indifferently behaved with the petitioner and now, they are living separately and though the petitioner is a holder of Master degree in Engineering, she is unemployed and now, the treatment is completed. Therefore, the petitioner states that she is fit for family life and she is very much willing for re-union and to resume the matrimonial home with the respondent.

5. The present petition for transfer is filed to transfer H.M.O.P.No.76 of 2006 pending before the Sub Court, Sivakasi to the Sub Court, Sivagangai on the ground that the petitioner is residing with her parents and hence, she is not in a position to travel from Sivagangai to Sivakasi and therefore, the case is to be transferred.

6. The learned counsel for the respondent contended that the petitioner has suppressed the fact regarding the treatment even after marriage and therefore, the marriage is to be declared as null and void.

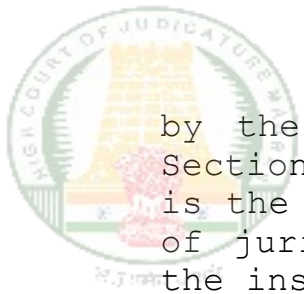
7. In support of the contention, the learned counsel for the respondent produced the judgment reported in 2016 (4) CTC 834 (in XXXX 'A' Vs. XXXX 'B') wherein this Court by invoking inherent jurisdiction under Section 151 of Code of Civil Procedure and Article 226 of the Constitution of India, declared the marriage null and void in divorce petition filed by the respective parties in that case.

8. The facts and circumstances of the case on hand are different. The petitioner has produced a Doctor Certificate categorically stating that her treatment was completed and she is fit for family life and further the petitioner is very much present before this Court and she is able to explain the nature of the treatment in the certificate issued by the Doctor. Such being the position, this Court is not inclined to consider the arguments of the learned counsel for the respondent. Further the petitioner is willing to continue the matrimonial life and accordingly, the judgment cited by the learned counsel for the respondent cannot be considered in respect of the present case.

9. 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:-

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

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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 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 filed a petition 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.''

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

i. The learned Subordinate Judge, Sivakasi, is directed to transmit the records in respect of H.M.O.P.No.76 of 2016 to the file of the Family Court, Madurai within a period of two weeks from the date of receipt of copy of this order.

ii. The learned Judge, Family Court, Madurai is directed to dispose of H.M.O.P.No.76 of 2016 as expeditiously as possible.

No costs. Consequently, connected C.M.P.(MD) Nos. 9916, 7107 and 10191 of 2016 are closed.

Sd/-

Assistant Registrar(WRITS)

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1.The Subordinate Judge, Sivakasi.

2.The Judge, The Family Court, Madurai.

+1 cc to MR. R. R. Kannan,ADVOCATE, SR NO: 67888.

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