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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.380 of 2016

and

C.M.P(MD)No.7445 of 2016

M.Narmatha

... Petitioner/Respondent/Wife

Vs.

Senthilraj

... Respondent /Petitioner/Husband

PRAYER : Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.73 of 2016 on the file of the Subordinate Court, Bhavani, Erode District and transfer the same to the Subordinate Court, Virudhunagar or any other appropriate forum in Virudhunagar District and may direct the Subordinate Court, Virudhunagar to dispose of the above H.M.O.P.No.73 of 2016 filed by the respondent within a specified time and pass such further orders.

For Petitioner : Mr. G.Mariappan

For Respondent : Mr.A.Jayaramachandran

ORDER

This Transfer Civil Miscellaneous petition has been filed to withdraw the H.M.O.P.No.73 of 2016 on the file of the Subordinate Court, Bhavani, Erode District and transfer the same to the Subordinate Court, Virudhunagar or any other appropriate forum in Virudhunagar District and may direct the Subordinate Court, Virudhunagar to dispose of the above H.M.O.P.No.73 of 2016 filed by the respondent within a time frame.

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

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

3. The short facts for the consideration of the petition is that the marriage between the petitioner and the respondent was



solemnized on 29.10.2012 at Thiruchendur Temple as per the Hindu Rites and Customs. Out of the wedlock, a male child was born and thereafter, the petitioner and the respondent are living separately. The respondent/husband filed a petition in H.M.O.P.No.73 of 2016 for restitution of conjugal rights under Section 9 of Hindu Marriage Act before the Subordinate Court, Bhavani, Erode District. The petitioner filed the petition to transfer the case from Bhavani to Virudhunagar on the ground that she has to look after her child and further cannot travel from Aruppukottai to Bhavani which is about 300 Kilometers away. Further, she is living with the support of her parents and her health condition will not permit her for long travel frequently. The respondent has not paid any amount for maintenance of the child as well as the petitioner.

4. The learned counsel appearing for the respondent vehemently opposed by stating that the respondent is residing in Sidney, Australia and his father who is the Power of Attorney holder to defend the case pending before the Subordinate Court, Bhavani, Erode District. Further, he contends that the father of the respondent is an aged person and he is having various ailments and cannot travel for a long distance.

5. While considering the petition for transfer, most specifically in matrimonial cases, the Court has to consider the convenience of the parties under the relevant provisions. In view of the provision under Section 19(iii)(a) of the Hindu Marriage Act, the Judgments are extracted hereunder:-

(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



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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 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



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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."

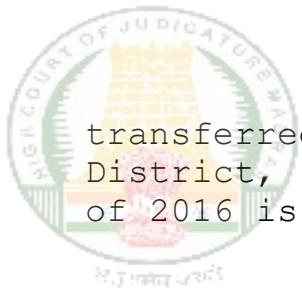
(iii) In a decision made in **TR.CMP (MD) No.108 of 2010, dated 03.03.2011**, the Madurai Bench of Madras High Court, has observed as below:-

"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."

In view of the principles laid down by this Court and considering the facts and circumstances, the petition deserves consideration.

6. This apart, the respondent/husband who filed the petition for restitution of conjugal rights is residing in Sidney, Australia. Therefore, it makes less difference whether he conduct the case either at Bhavani or at Virudhunagar. The inconvenience of the Power of Attorney holder, namely, the father of the respondent cannot be considered in a transfer petition, most specifically filed by the petitioner who is the wife.

7. Considering the arguments of the learned counsel for both the petitioner and the respondent and the precedents laid down by this Court in the Judgments cited supra, the petition deserves to be considered. Accordingly, the TR.C.M.P.(MD) No.380 of 2016 is allowed and the H.M.O.P.No.73 of 2016 pending before the Subordinate Court, Bhavani, Erode District is ordered to be



transferred to the file of the Subordinate Court, Virudhunagar District, forthwith. No costs. Consequently, C.M.P.(MD)No.7445 of 2016 is closed.

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Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Bhavani, Erode District.
2. The Subordinate Judge, Virudhunagar.

+1 cc to MR.G.MARIAPPAN, Advocate SR.No.61455

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and
C.M.P(MD)No.7445 of 2016
19.10.2016

SMA/KM/08.11.2016:5P/4C