



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP (MD) No.388 of 2016

and

C.M.P (MD) No.7579 of 2016

P.Vani

...Petitioner

Vs.

C.Manikandan

...Respondent

PRAYER : Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.84 of 2016 on the file of the Family Court, Dindigul, Dindigul District, to transfer the case to the III Additional Subordinate Judge, Madurai, Madurai District (Usilampatti Camp Court) and pass any other orders.

For Petitioner : Mr.P.Ammavasai

For Respondent : Mr.A.Hariharan

ORDER

This Transfer Civil Miscellaneous petition has been filed to withdraw the H.M.O.P.No.84 of 2016 on the file of the Family Court, Dindigul, Dindigul District, to transfer the case to the III Additional Subordinate Judge, Madurai, Madurai District (Usilampatti Camp Court).

2. The facts stated by the petitioner is that the marriage between the petitioner and the respondent was solemnized on 16.05.2013 as per the Hindu Rites and Customs. Due to the strained relationship between the parties, the respondent/husband filed a petition in H.M.O.P.No.84 of 2016 seeking divorce before the Family Court, Dindigul. Under these circumstances, the present petition is filed seeking transfer of the H.M.O.P.No.84 of 2016 from the Family Court, Dindigul to the III Additional Subordinate Court, Madurai District (Usilampatti Camp Court).

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

4. The learned counsel for the petitioner contended that the petitioner is living separately after five months from the date of marriage and out of the wedlock between the petitioner and the respondent, a female child was born on 05.08.2014 in Government Hospital at Usilampatti. Now the petitioner has to look after the girl child and residing with the support of her parents. Hence, she cannot travel to Dindigul along with her child who cannot be left alone.



5. The learned counsel for the respondent vehemently opposed the transfer petition on the ground that the petitioner is gainfully employed and working as a Lecturer in Educational College and she is capable of spending for travelling and to defend the case at Dindigul.

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6. In view of the interpretation of the provision under Section 19 (iii-a) of the Hindu Marriage Act, while narrated by this Court, which is narrated below:-

(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:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to



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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."

(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



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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.

7. The place of the wife is preferable in the present case on hand, the petitioner is having two years old female child and living along with her parents. These facts deserves to be considered in favour of the petitioner and therefore, this Court is of the view that the petitioner is entitled for the relief sought for.

8. Accordingly, the TR.C.M.P.(MD)No.388 of 2016 is allowed and the H.M.O.P.No.84 of 2016 pending before the Family Court, Dindigul is ordered to be transferred to the file of the Subordinate Court, Madurai, Madurai District(Usilampatti Camp Court). No costs. Consequently, C.M.P.(MD)No.7579 of 2016 is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1. The Judge, Family Court, Dindigul.
2. The Subordinate Judge, Madurai,
Madurai District(Usilampatti Camp Court).

+1cc to M/s.P.Ammavasai, Advocate in SR.62085

+1cc to M/s.A.Hariharan, Advocate in SR.61548

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and
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pmu

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