



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM:

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

**Tr.C.M.P(MD)No.392 of 2016
and
C.M.P(MD)No.7664 of 2016**

S.Murugeswari

... Petitioner

Vs.

P.Suresh

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the F.C.O.P.No.156 of 2016 on the file of the Family Court, Vellore and transfer the same to the Sub Court, Virudhunagar and tried along with H.M.O.P.No.69 of 2016.

For Petitioner : Mr.P.Sivachandran
For Respondent : Mr.Mr.S.Ramasamy

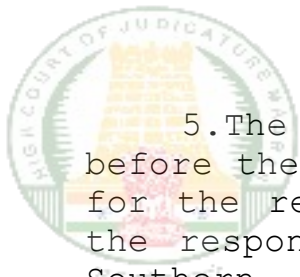
O R D E R

This petition has been filed to withdraw the F.C.O.P.No.156 of 2016 on the file of the Family Court, Vellore and transfer the same to the Sub Court, Virudhunagar and tried along with H.M.O.P.No.69 of 2016.

2.The marriage between the petitioner and the respondent was solemnized on 11.09.2013 as per Hindu Rights and Customs. Out of the wedlog, a male child was born and now with the custody of the petitioner.

3.The petitioner contended that due to the dowry harassment caused by the respondent and his family members, she was forced to leave the matrimonial home and now residing with her aged parents at Virudhunagar District.

4.The learned counsel for the petitioner contended that the petitioner is unemployed and not having any independent sources of income, further living with support of her parents and she has to look after the livelihood of her minor child also.



5.The respondent filed a petition in F.C.O.P.No.156 of 2016 before the Family Court, Vellore for divorce. The learned counsel for the respondent opposed the transfer petition by stating that the respondent is a physically challenged person and working in Southern Indian Railways at Katpadi. Therefore, it will be difficult for him to travel from Vellore to Virudhunagar. Further, it is contended that the petitioner left the matrimonial home at her own volition and not at the instance of the respondent and therefore, the present petition is to be dismissed.

6.Considering the rival contentions both by the learned counsel for the petitioner and the respondent, this Court is of the opinion that the respondent is a Central Government employee working in Southern Railway and the petitioner is unemployed having one minor child and living with the support of her parents and it will be difficult for her to spend and travel to contest the case filed by the respondent in F.C.O.P.No.156 of 2016 for divorce.

7.Therefore, the balance of convenience is in favour of the petitioner. Further the Hon'ble Division Bench of this Court issued guidelines relating to the transfer of matrimonial cases, which is transfer of matrimonial cases, which is 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 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 Courts. 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.

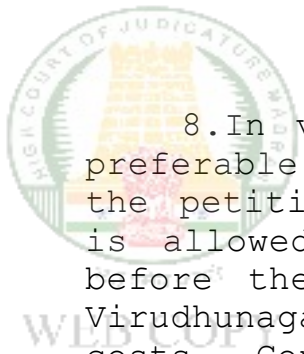
In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

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 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



8. In view of the above judgments, the place of the wife is preferable and in the present case, the circumstances narrated by the petitioner deserve consideration. Accordingly, this petition is allowed and the petition in F.C.O.P.No.156 of 2016 pending before the Family Court, Vellore is transferred to Sub Court, Virudhunagar to be tried along with H.M.O.P.No.69 of 2016. No costs. Consequently, connected C.M.P.is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

nbj

To

1.The Subordinate Court, Virudhunagar.

2.The Judge, Family Court, Vellore.

+1CC to Mr.S.Ramasamy, Advocate Sr.No.71201

GJM/SS2/KSM/12.1.17-4p-4C

Tr.C.M.P. (MD) No.392 of 2016

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