



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2016

CORAM :

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP (MD) No.413 of 2016
and
C.M.P (MD) No.8143 of 2016

Yazhini

... Petitioner

vs.

M.Baladeepak

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the case in HMOP.No.233 of 2015, on the file of the Hon'ble Subordinate Court at Theni preferred by the respondent herein and transfer the same to the Hon'ble III Additional Subordinate Court, Madurai (Camp Court at Usilampatti), where the petitioner filed a petition for restitution of conjugal rights in H.M.O.P.No.07 of 2016.

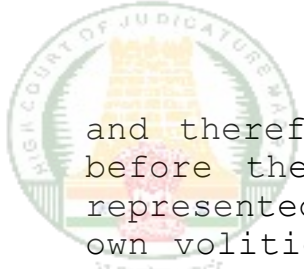
For Petitioner : Mr.M.Solaisamy
For Respondent : Mr.M.Senthil Kumar

ORDER

The marriage between the petitioner and the respondent was solemnized on 09.11.2014 as per the Hindu rites and customs. Due to the strained relation between the parties, they are residing separately and the petitioner filed HMOP.No.7 of 2016 before the III Additional Subordinate Court, Madurai, Camp Court at Usilampatti, for restitution of conjugal rights.

2.The contention of the petitioner is that the respondent has filed a petition for divorce in HMOP.No.233 of 2015 before the Subordinate Court, Theni. The reason stated by the petitioner is that she is now residing with her parents and not having any independent sources of income and therefore, she has to depend her parents to spend for the case. Hence, she is unable to attend the case at Theni and requested for transfer of the case.

3.The learned counsel appearing for the respondent contended that the petitioner and her parents are threatening the respondent



and therefore, he will not be in a position to defend the case before the Court at Usilampatti. Further, the learned counsel represented that the petitioner left the matrimonial home on her own volition not at the instance of the respondent and therefore, the present petition has to be dismissed.

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4. The principles with regard to transfer petitions, more specifically, in the matters of matrimonial cases, are in favour of women and the decisions of the High Court of Madras, in the following cases interpreting Section 19(iii)(a) of the Hindu Marriage Act, 1955, also confirm that position:-

(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 of the Hon'ble Supreme Court:-

'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.

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

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.

5.The contention raised by the learned counsel appearing for the respondent that the respondent will be threatened by the petitioner and her family members.

6.The learned counsel appearing for the petitioner represented that he will advise his client not to indulge in such activities and the petitioner will co-operate for the peaceful conduct of the case at Usilampatti and the assurance made by the learned counsel for the petitioner is recorded.

7.Considering the facts and circumstances of the case, this Court is inclined to consider the plight of the petitioner. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and HMOP.No.233 of 2015, pending before the Subordinate Court, Theni, is ordered to be transferred to the III Additional Subordinate Court, Madurai (Camp Court at Usilampatti) and to be tried along with H.M.O.P.No.7 of 2016, which is pending before the III Additional Subordinate Court at Madurai (Camp Court as Usilampatti) for joint trial. Consequently, C.M.P(MD)No.8143 of 2016 is closed. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar



To

1. The Subordinate Judge, Theni.

2. The III Additional Subordinate Judge,
Madurai
(Camp Court at Usilampatti).

+ 1 CC TO Mr.M.SENTHIL KUMAR, ADVOCATE IN SR No. 66914

VSA

TE/CK : 24/11/2016 : 4P/4C

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