



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.414 of 2016

and

C.M.P(MD)No.8162 of 2016

B.Prathili Bala

... Petitioner

vs.

K.Amuthabalan

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the case on the file of the Family Court, Madurai, in HMOP No.532 of 2016 and transfer the same to the Honourable Principal Subordinate Judge, Trichy, to be heard along with HMOP No.212/2016 on the file of the Honourable Principal Subordinate Judge, Trichy.

For Petitioner : Mr.K.Neethimohan
For Respondent : Mr.N.Sathish Babu

ORDER

The marriage between the petitioner and the respondent was solemnized on 31.05.2012 as per the Hindu rites and customs and due to the strained relationship between the parties, they are living separately. The respondent filed HMOP.No.532 of 2016 on the file of the Family Court, Madurai, for divorce. The present petition seeks transfer of HMOP.No.532 of 2016 on the file of the Family Court, Madurai, to the Principal Sub Court, Trichy, and to try along with HMOP.No.212 of 2016 filed by the petitioner, seeking restitution of conjugal rights.

2.The learned counsel for the petitioner contended that the petitioner is now living with her parents at Trichy and she is unemployed and not having any independent sources of income. Therefore she cannot meet out the travelling expenses to contest the case at Madurai.

3.The learned counsel for the respondent opposed the present petition by stating that the respondent is ready and willing for re-union and live with the petitioner. The respondent is not at fault and it is the petitioner at fault. Therefore, this petition should be dismissed and no indulgence should be shown to the petitioner.



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.

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 resides.''

5.Considering the arguments and counter arguments of the counsels both for the petitioner and the respondent and in view of the above pronouncements, this Court is of the view that the case of the petitioner deserves to be considered. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and HMOP No.532 of 2016 on the file of the Family Court, Madurai, is ordered to be transferred to the Principal Sub Court, Trichy, for a joint trial along with HMOP No.212 of 2016. No costs. Consequently, C.M.P(MD)No.8162 of 2016 is closed.

Sd/
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar.

To

1)The Judge,Family Court, Madurai.

2)The Judge,Principal Sub Court, Trichy.

+1CC to M/S. NeethiMohan, Advocate, SR.No. 62071

+1CC to M/S.N.Sathish Babu, Advocate, SR.No. 62879