



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

Tr.C.M.P(MD)No.427 of 2016 and
C.M.P.(MD).No.8451 of 2016

S.Renugadevi

... Petitioner

Vs.

M.Vijaykumar

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the F.C.O.P.No.177 of 2016 pending on the file of Family Court, Erode and to transfer the same to the file of I Additional Sub Court, Madurai (Camp at Melur) to be tried along with H.M.O.P.No.289 of 2016.

prayer amended as per order of this
Hon'ble Court dated 16.11.2016 made in
C.M.P.(MD) No.10765 of 2016 by SMSJ

For Petitioner : Mr.P.Kalayarasi Bharathi

For Respondent : Mr.B.Rooban

ORDER

The marriage between the petitioner and respondent had been solemnized on 12.12.2000 as per the Hindu rites and customs at Palani and out of the wedlock a male child was born on 21.03.2012 and thereafter the petitioner and respondent developed misunderstanding and accordingly the petitioner left the matrimonial home and now residing with her parents and living with their support and looking after the minor child. The Respondent filed F.C.O.P.No.177 of 2016 before the Family Court, Erode. The contention of the petitioner is that now she is living with her parents at Madurai and she has to look after her minor child and further she has filed a petition in H.M.O.P.No.289 of 2016 before the I Additional Subordinate Court, Madurai (Camp at Melur).

2.The learned counsel for the respondent opposed the transfer petition by stating that the petitioner has left the matrimonial



home on her own volition and not at the instance of the respondent and the petitioner is at fault and therefore the petition has to be dismissed. Further, the learned counsel for the respondent contended that there is life threat for him in the event of traveling to Madurai.

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3. Such a vague contention of the respondent cannot be considered, when there is no material to establish the fact. Considering the arguments and the counter arguments of the respective counsels, this Court is of the opinion that the principles regarding transfer petitions, more specifically in the matters of matrimonial cases in respect of women, are well settled through the decisions of the High Court of Madras, in the following cases:-

(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.

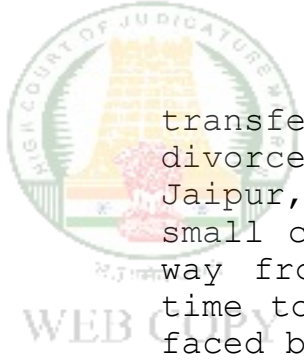
22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. 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.'

4. In view of the above pronouncements, the case of the petitioner deserves to be considered and accordingly, this Transfer Civil Miscellaneous Petition is allowed and F.C.O.P.No.177 of 2016 pending on the file of the Family Court, Erode is ordered to be transferred to the file of I Additional Subordinate Court, Madurai (Camp at Melur) forthwith to be tried along with H.M.O.P.No.289 of 2016. No costs. Consequently, C.M.P(MD)No.8451 of 2016 is closed.

Sd/-
Assistant Registrar (RTI)

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Sub Assistant Registrar



1.The Judge, Family Court,
Erode.

2.The I Additional Subordinate Judge,
Madurai (Camp at Melur).

+ 1 CC TO Mr.M.VEILKANIRAJU, ADVOCATE IN SR No. 69734
+ 1 CC TO Mr.B.ROOBAN, ADVOCATE IN SR No. 69857

SJ

TE/PV/SAR-I : 27/12/2016 : 4P/5C

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