



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P(MD)No.44 of 2016

and

C.M.P.(MD).No.947 of 2016

1.Mr.T.Irfan Ahmed
2.Mrs.V.Shanaz Kauser
3.Mr.T.Rizwan Ahmed

... Petitioners

Vs.

Ms.M.Ghousia Firdous

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, to withdraw and transfer M.C.No.1 of 2015 on the file of the Additional Mahila Court, Thirichirapalli to try along with O.S.No.15 of 2015 on the file of the Family Court, Thirichirapali.

For Petitioners :Mr.K.Mohanamurali
For Respondent :Mr.P.Yasmin Begum

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw and transfer M.C.No.1 of 2015 on the file of the Additional Mahila Court, Thirichirapalli to try along with O.S.No.15 of 2015 on the file of the Family Court, Thirichirapali.

2.The first petitioner herein is husband and the respondent is wife. The petitioner Nos.2 and 3 are the in-laws of the respondent. The marriage between the petitioner and the respondent was solemnized on 11.11.2012. A male child was born on 07.10.2013 in the wedlock.

3.After delivery of child, the respondent started ill feelings towards petitioners by spreading rumors and was not respecting petitioners 2 and 3. The respondent treated the petitioner with cruelty.

4.The petitioners, respondent and her father attended the funeral of first petitioner's grand mother at Bangalore on 03.06.2014. After coming to Chennai respondent left the matrimonial home with the minor son without informing anybody and without any reason. The first petitioner engaged an investigating Agency and find out the place where she was residing.

5.The respondent has left the matrimonial home without any cause. She has treated the petitioners with cruelty which caused mental agony and harassed the first petitioner. In the circumstances, the first petitioner pronounced triple Thalak as per Muslim rites and Customs. The first petitioner issued notice to the respondent about divorce. The respondent is not entitled to custody of minor son as she has left the matrimonial home without any reason. The respondent/wife filed M.C.No.1 of 2015 on the file of the Additional Mahila Court, Thirichirapalli under Section 12, 18 and 22 of Domestic Violence Act, 2005 making false allegations against the petitioners. The petitioners have filed counter.



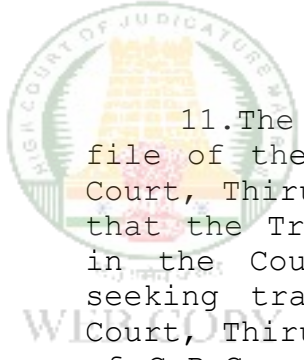
6. According to the petitioners, at present, the first petitioner is working at Hitachi Payment Services Limited, Velachery, Chennai and he has been forced to attend the proceedings in the Family Court and the Additional Mahila Court, atleast two times in both the cases and his aged parents were also forced to travel from Chennai to Trichy for attending the hearing. On 11.09.2015 the petitioners were waiting outside the Mahila Court to attend the hearing and due to boycott of Advocates, they did not go inside the Court Hall. The Court staff informed the petitioners that the case was adjourned. On verification with their Advocate, they came to know that they were set ex-parte. The petitioners have filed C.M.P.No.2600 of 2015 to set aside the ex-parte order and the same is pending. In the circumstances, he has come out with the present Transfer Civil Miscellaneous Petition.

7. The respondent/wife filed counter affidavit stating that the issue involved in both the cases are not one and the same and she has filed M.C.No.1 of 2015 before the learned Additional Mahila Judge, Thirichirapalli, under Section 12, 18 and 22 of Domestic Violence Act, 2005 which is a separate proceedings. In the proceedings in M.C / D.V.No.1 of 2015, the first hearing was fixed on 28.01.2015 and the petitioners have appeared before the Additional Mahila Court only for two hearings out of 13 hearings fixed by the Court and because of their continuous non-appearance in the Court, the learned Judicial Magistrate passed an Ex-parte order on 11.09.2015 and subsequently, the petitioners filed C.M.P.No.2600 of 2015 for setting aside the ex-parte order on 06.10.2015.

8. The provisions under Section 12 of Domestic Violence Act, provides for speedy disposal of the application and to give immediate relief to the aggrieved person. The Tr.C.M.P is not maintainable in this Court as the petitioners are seeking transfer within the same District. For such a transfer, the Transfer O.P has to be filed only before the District Judge of concerned District. Further the MC/DVNo.1 of 2015 is before Judicial Magistrate and proceedings has to be conducted as per the Code of Civil Procedure, whereas O.S.No.15 of 2015 is a Civil remedy and the Family Court procedures are as per C.P.C. If the respondent is aggrieved by any order passed by Mahila Court/Judicial Magistrate, she can prefer an appeal to Sessions Court and further Revision to this Court. On the other hand, any order of Family Court can be challenged only before a Division Bench of this Court. The issues involved in O.S.No.15 of 2015 and MC.DVNo.1 of 2015 are entirely different and therefore, there will not be any conflict of decision. If the petition is transferred it will delay the proceedings and affect the speedy disposal of the case and prayed for dismissal of Tr.C.M.P.

9. It is not correct to state that the respondent left the matrimonial home. On the other hand, the first petitioner left her father's residence in the middle of night.

10. I have heard Mr.K.Mohanamurali, learned counsel appearing for the petitioners and M/s.P.Yasmin Begum, learned counsel appearing for the respondent and carefully perused the entire materials on record.



11. The petitioners are seeking transfer of MC/DVNo.1 of 2015 from the file of the Ist Additional Mahila Court, Thiruchirappalli to the Family Court, Thiruchirappalli. The learned counsel for the respondent submitted that the Tr.C.M.P is not maintainable in this Court and has to be filed in the Court of District Judge, Thiruchirappalli as petitioners are seeking transfer of MC/DVNo.1 of 2015 from the Ist Additional Mahila Court, Thiruchirappalli to the Family Court, Thiruchirappalli. Section 23 of C.P.C specifies the Court to which a Transfer petition can be filed. The said Section 23 of C.P.C reads as follows:

"23. To what Court application lies.-(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts by to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate."

As per Section 23(2) C.P.C., if the Courts in which the cases are pending are subordinate to different Appellate Courts then transfer petition can be filed in the High Court. Admittedly an appeal lies to this Court from the Order of Family Court while so, appeal lies to Sessions Court from the orders of Ist Additional Mahila Court namely Judicial Magistrate. In view of this admitted position, the Tr.C.M.P is maintainable in this Court.

12. The learned counsel for the petitioners contended that the hearing in Family Court and Mahila Court are posted on different days and petitioners are finding it very difficult to attend the hearings on different days in the two Courts. On the other hand, the learned counsel for the respondent submitted that the petitioners attended the hearing only on two occasions and did not attend at least 11 hearings. They are set ex-parte and the petition to set aside the ex-parte is pending. Further, the learned counsel for respondent contended that the reliefs sought for in O.S.No.15 of 2015 and MC/DVNo.1 of 2015 are different to be dealt with under C.P.C and Crl.P.C respectively. Remedy under Domestic Violence Act is a speedy remedy and petitioners are prolonging the matters. These contentions are valid and acceptable. In view of different reliefs sought for under different (statutes) Laws there will not be any conflicting decisions. Further the petitioners can request the Courts to post both the cases on the same day so as to avoid their inconvenience.

For the above reason, the Tr.C.M.P is liable to be dismissed as devoid of merits.

In the result, the Tr.C.M.P is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar



To

1. The Judge
The Additional Mahila Court,
Thirichirapalli.

WEB COPY

2. The Judge,
The Family Court, Tiruchirapali.

+1 CC to M/s. Mohana Murali, Advocate, SR No.12241

+1 CC to M/s.Yasmin Begum, Advocate, SR No.11711

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