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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.447 of 2016
and
C.M.P(MD)No.8991 of 2016

A.Sumithira Devi ... Petitioner

vs.

H.Harikrishnan ... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP.No.951 of 2016 on the file of the Family Court, Chennai and transfer the same to the file of Family Court, Tirunelveli.

For Petitioner : Mr.K.K.Ramakrishnan

For Respondent : Mr.J.Antony Jesus

ORDER

The marriage between the petitioner and the respondent was solemnized on 23.01.2015 at Arulmigu Vadapalani Aandavar Thirukovil, Vadapalani, as per the Hindu rites and customs and the respondent was working as Music Teacher at Chennai. Due to strained relationship between the parties, the respondent filed HMOP No.951 of 2016 seeking divorce, which is pending before the Family Court, Chennai.

2.The contention of the petitioner is that after their separation from the matrimonial home, the petitioner left Chennai and came to Tirunelveli and now she is residing with her parents at Tirunelveli. The petitioner is unemployed and not having income of her own and at this point time, she is unable to travel from Tirunelveli to Chennai to defend the case effectively.

3.The learned counsel for the respondent vehemently opposed the petitioner by stating that the contentions of the petitioner are totally false and cannot be accepted and the petitioner is normally residing in Chennai and falsely stated that she is residing in Tirunelveli.

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4.The learned counsel for the petitioner has shown the instruction given to him in writing by the petitioner, wherein, the petitioner herself has written that she is residing in her parent's house at Tirunelveli.

5.In any event, the petitioner will not prefer to contest case at Tirunelveli, if she is residing at Chennai. Therefore, the contention of the learned counsel for the respondent cannot be accepted and the petition deserves to be considered.

6.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.
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> 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.
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> In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of

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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.

7.Considering the facts and circumstances of this case 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.951 of 2016 pending on the file of the Family Court, Chennai, is ordered to be transferred to the Family Court, Tirunelveli, forthwith. No costs. Consequently, C.M.P(MD)No.8991 of 2016 is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
1)The Judge, Family Court, Chennai.

2)The Judge, Family Court, Tirunelveli.

+1 cc to MR.K.K.RAMAKRISHNAN, Advocate SR.No.63322
+1 cc to MR.R.BALAKRISHNAN, Advocate SR.No.63518

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