



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2016

CORAM

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P(MD)No.48 of 2016 and
C.M.P(MD).No.1008 of 2016

S. Vairamuthu

... Petitioner

Vs.

1. S. Maheswari
2. Minor Gokul Prasath
(minors rep. By his mother/
first respondent)

... Respondents

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw and Transfer M.C.No.1 of 2015, from the file of the Chief Judicial Magistrate, Thoothukudi to Sub Court, Kovilpatti and to be tried along with HMOP.No.140 of 2014 on the file of the Sub Court, Kovilpatti.

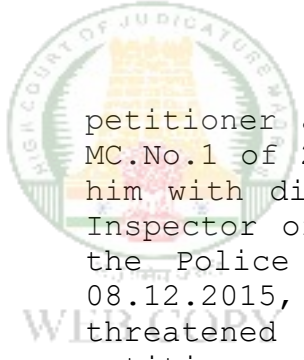
For Petitioner	: Mr. S. Balaji
For Respondent	: Mr. S. Ponsenthilkumaran

ORDER

The Transfer Civil Miscellaneous Petition is filed to withdraw and Transfer M.C.No.1 of 2015, pending on the file of the Chief Judicial Magistrate, Thoothukudi to Sub Court, Kovilpatti and to be tried along with HMOP.No.140 of 2014, on the file of the Sub Court, Kovilpatti.

2. The petitioner herein is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 30.11.2011. After marriage, both were living together in the matrimonial home at Sattur. A male child was born in the wedlock on 11.12.2012. Due to dispute, both are living separately and the petitioner filed HMOP.No.234 of 2013 for restitution of conjugal rights. The first respondent entered appearance through his counsel in HMOP.No.234 of 2013. In the mean time, the first respondent gave a complaint against the petitioner and his family members on 02.01.2014, before the All Women Police Station, Thoothukudi and the petitioner has also attended enquiry. Subsequently, the first respondent has filed Tr.C.M.P.No.168 of 2014 to transfer HMOP.No.234 of 2013 from the file of Sub Court, Sivakasi to Sub Court, Kovilpatti. This Court by order dated 01.07.2014, ordered said Transfer CMP and the same was dismissed for default on 14.12.2015.

3. The first respondent filed MC.No.25 of 2014, before the Chief Judicial Magistrate, Thoothukudi, under the Domestic Violence Act and also filed M.C.No.1 of 2015 before the same Court for maintenance, for herself and for second respondent. On receiving the summons, the



petitioner appeared before the Chief Judicial Magistrate, Thoothukudi in MC.No.1 of 2015, on that date the relatives of the respondents threatened him with dire consequences. Immediately, he gave a complaint before the Inspector of Police, South Police Station, Thoothukudi on 26.02.2015 and the Police has issued receipt to the same on 28.02.2015. Again on 08.12.2015, when the petitioner appeared before the Court, he was threatened by the family members of the respondents. Now, the petitioner has come out with the present to Transfer M.C.No.1 of 2015, pending on the file of the Chief Judicial Magistrate, Thoothukudi to Sub Court, Kovilpatti and to be tried along with HMOP.No.140 of 2014, on the file of the Sub Court, Kovilpatti, on the ground that earlier HMOP filed by the petitioner was transferred to sub Court, Kovilpatti, as per the order passed by this Court in Transfer CMP(MD).No.168 of 2014.

4. The respondents filed counter affidavit stating that the HMOP filed by the petitioner was posted for cross examination of the petitioner by the respondent on 14.12.2015. The petitioner did not appear either in person or through his counsel. Therefore, it was dismissed for default on 14.12.2015. The respondent filed suit in O.S.No.106 of 2015, on the file of the Sub Court, Thoothukudi, seeking a sum of Rs.5,000/- to the respondents as maintenance and the said suit was decreed on 16.10.2015. The petitioner did not comply the decree passed in O.S.No.106 of 2015. Further, now, the respondents are residing at Thoothukudi and it is very difficult for them to travel from Thoothukudi to Kovilpatti for each and every hearing to attend M.C.No.1 of 2015 and prayed for dismissal of this Transfer CMP.

5. Heard the learned counsel appearing for both parties.

6. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference and the respondents are now residing at Thoothukudi and HMOP filed by the petitioner, which was transferred to Sub Court, Kovilpatti was dismissed for default on 14.12.2015. In view of this fact, the Transfer CMP is devoid of merits and the same is liable to be dismissed.

7. Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

- 1.The Chief Judicial Magistrate, Thoothukudi
- 2.The Sub court, Kovilpatti

+1cc to M/s.S.Pon Senthilkumar, Advocate SR.No.9090