



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

Tr.C.M.P(MD)No.486 of 2016

and

C.M.P. (MD) .No.9767 of 2016

A.Sivagami @ Muthu Sivagami

... Petitioner

Vs.

S.Anand

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the H.M.O.P.No.631 of 2012 pending on the file of Family Court, Madurai and to transfer the same to the file of Family Court, Coimbatore.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.K.V.Ramkumar

ORDER

The marriage between the petitioner and respondent has been solemnized on 13.07.2006 as per the Hindu rites and customs at Valayapatti in Pudukkottai District. Due to strained relationship between the parties, the petitioner left the matrimonial home and now she is living separately.

2.The contention of the petitioner is that the respondent filed H.M.O.P.No.631 of 2012 before the Family Court, Madurai for divorce. Earlier she filed Tr.C.M.P.No.178 of 2013 to transfer the very same case from Family Court, Madurai to Family Court, Coimbatore and during the pendency of the transfer petition H.M.O.P.No.631 of 2012 was decided exparte and therefore, this Court dismissed the transfer petition as infructuous. Subsequently, the petitioner filed a petition to restore the H.M.O.P.No.631 of 2012 and accordingly it was restored on 10.10.2014. Hence, the present petition for transfer.

3.The learned counsel for the respondent opposed the transfer petition by stating that the exparte decree of divorce was passed by the Family Court, Madurai and subsequently, the petitioner filed petition to restore the H.M.O.P.No.631 of 2012 and during



the intervening period the respondent got married and living with his wife and got children. Therefore, the case is to be dismissed.

4. In support of his argument, the learned counsel for the respondent cited the judgment of this Court in **Vijayalakshmi v. Kannappan [2010 (2) CTC 654]**, wherein it is held as under:

"9. In the above said decision, the Supreme Court strike a note of caution in the matter of condonation of delay and even though it is held that liberal approach has to be taken while dealing with the condonation of delay, it should also be borne in mind that if any right has accrued to other party, it shall not be defeated by such condonation of delay."

5. The above judgment cited by the learned counsel for the respondent is not applicable in respect of the facts and circumstances of the case on hand and therefore, the contentions of the respondent are rejected. The contention of the petitioner to transfer the case is that now she is living with her parents aged 79 and 78 respectively and she is not having independent source of income and depending on her parents.

6. 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 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.

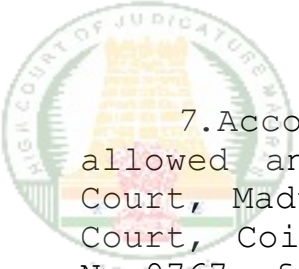
In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

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 for the transfer of the jurisdiction of the Court where she resides.'



7. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and H.M.O.P.No.631 of 2012 on the file of the Family Court, Madurai is ordered to be transferred to the file of Family Court, Coimbatore forthwith. No costs. Consequently, C.M.P(MD) No.9767 of 2016 is closed.

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Sd/-

Assistant Registrar(Crl)

/True copy/

Sub Assistant Registrar

To

1.The Judge,
Family Court,
Madurai.

2.The Judge,
Family Court,
Coimbatore.

+1 cc to M/s.N.Krishnaveni, Advocate in SR.No. 69474

sj

CSL/DB/25.11.2016: 4P/4C

Tr.C.M.P(MD)No.486 of 2016 and
C.M.P.(MD).No.9767 of 2016
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