



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.518 of 2016

R.Venkateswaran

... Petitioner

vs.

M.Latha

... Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the cases in H.M.O.P.No.130 of 2010 and H.M.O.P.No.670 of 2010 on the file of Sub Court, Trichirappalli, and transfer the same to the file of the Sub Court, Hosur.

For Petitioner : Mr.S.Raja Lenin

ORDER

This petition has been filed seeking to transfer the cases in H.M.O.P.No.130 of 2010 and H.M.O.P.No.670 of 2010, on the file of Sub Court, Trichirappalli, to the file of the Sub Court, Hosur.

2.The contention of the learned counsel for the petitioner is that the marriage between the petitioner and the respondent was solemnised on 06.06.2004, as per the Hindu rites and customs. Out of the wedlock, a female child was born on 12.02.2006, now under the custody of the respondent. Due to the misunderstanding between the parties, the petitioner and the respondent are living separately. The petitioner/husband filed a divorce petition before the Principal Judge, Family Court at Bangalore, in M.C.No.2675 of 2009 and the respondent/wife filed HMOP.No.130 of 2010, for restitution of conjugal rights, before the Principal Sub Court, Tiruchirappalli. Subsequently, the respondent approached the Hon'ble Supreme Court of India in Case(Civil)No.417 of 2010, for transfer and pursuant to the orders of the Hon'ble Supreme Court of India, M.C.No.2675 of 2009 was transferred from the Family Court, Bangalore, to the Principal Sub Court, Tiruchirappalli, and the case was renumbered as HMOP.No.670 of 2010 and tagged along with HMOP.No.130 of 2010 for a joint trial. The petition seeking interim maintenance filed by the respondent, was also ordered and against which, the petitioner filed CRP(MD) No.2068 of 2015 and this Court, confirmed the order of maintenance and accordingly, the petitioner paid the arrears of maintenance to the respondent. The present petition for transfer is filed, once again by the petitioner to transfer the case from Sub Court, Tiruchirappalli, to the Sub Court, Hosur.



3. The learned counsel for the petitioner contends that the petitioner is unable to travel from Bangalore to Tiruchirappalli, which is near about 350 kms and therefore, filed this petition for transfer. But, this Court is of the view that the present petition is filed, only to prolong the issue and in fact, after the Hon'ble Supreme Court allowed the petition for transfer and transferred the divorce petition filed by the petitioner from the Family Court, Bangalore, to the Principal Sub Court, Tiruchirappalli. Further, 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.

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



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.

4.Considering the facts and circumstances of the case and in view of the above pronouncements, and also the fact that the parties had approached the Hon'ble Supreme Court of India, seeking transfer and the case was transferred to the Principal Sub Court, Tiruchirappali, this Court is not inclined to consider the present petition for transfer and the same is devoid of merits. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge, Trichirappalli.

TR.CMP(MD)No.518 of 2016

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