

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P. No.328 of 2017

and C.M.P.No.6234 of 2017

M.Vasantha Kumar

... Petitioner

Vs.

S.B.Anu

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., praying to withdraw and transfer the petition in I.D.O.P.No.13 of 2017 pending on the file of the Principal District and Sessions Court, Thiruvellore, to the file of the II Additional Family Court, Chennai.

For Petitioner : Mr.A.Mohan

O R D E R

This petition has been filed to withdraw and transfer the petition in I.D.O.P.No.13 of 2017 pending on the file of the Principal District and Sessions Court, Thiruvellore, to the file of the II Additional Family Court, Chennai.

2. The petitioner herein is the husband and the respondent herein is the wife. The marriage between the petitioner and the respondent was solemnised on 17.08.2005 as per Christian rites and customs. After the marriage, both were living together in the matrimonial home at Ayanavaram in Chennai, along with the parents of the petitioner. A male child was born out of wed lock, on 08.06.2006. Without any reason, the respondent had withdrawn from the society of the petitioner and issued notice to the petitioner on 16.09.2016 making baseless and frivolous allegations against the petitioner. The petitioner sent a reply notice on 10.10.2016, which was acknowledged by the respondent on 13.10.2016. The respondent though a resident of Poonamallee and working at T.Nagar, filed I.D.O.P.No.13 of 2017 for divorce on the file of the Principal District and Sessions Court, Thiruvellore. The petitioner has filed I.D.O.P.No.4327 of 2016 on the file of the II Additional Family Court, Chennai, for restitution of conjugal rights.

3. Learned counsel for the petitioner would submit that as the petitioner is suffering from acute back pain, he cannot travel for a long distance either by bus or two wheeler or

train. It is further submitted that the petitioner's mother, who is an aged person, is suffering from various ailments including diabetics and asthmatic complications and hence, it is not possible for the petitioner to travel a long distance for attending the Court by leaving his mother. He would further submit that on the other hand, no prejudice would be caused to the respondent/wife, if I.D.O.P.No.13 of 2017 is transferred from the file of the Principal District and Sessions Court, Thiruvellore to the file of the II Additional Family Court, Chennai. He has also filed medical certificates of the petitioner and his mother, which finds place in page Nos.25 and 26 of the typed set of papers to substantiate his case that the petitioner is suffering from back pain and his mother is also suffering from some ailments.

4. Heard the learned counsel for the petitioner and perused the typed set of papers.

5. A reading of the medical certificates produced by the petitioner does not substantiate the case of the petitioner. According to the petitioner, he and his mother are suffering from serious ailments and back pain, because of which, the petitioner cannot travel from Chennai to Thiruvellore to attend the hearing of I.D.O.P.No.13 of 2017 on the file of the Principal District and Sessions Court, Thiruvellore. It is to be noted that I.D.O.P.No.13 of 2017, which is filed by the respondent, is pending before the Principal District and Sessions Court, Thiruvellore, wherein it is not necessary for the parties to appear before the Court for each and every hearing and it is sufficient for them to attend the hearing only at the time of trial or appear before the Court, as and when, so directed by the Court. On the other hand, if I.D.O.P.No.13 of 2017 is transferred from the Court at Thiruvellore to II Additional Family Court, Chennai, the parties must appear before the Family Court for each and every hearing, which will cause hardship to the respondent.

6. It is well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another].

7. Therefore, in the case on hand, it is clear that no prejudice would be caused to the petitioner, if I.D.O.P.No.13 of 2017 is heard and decided by the learned Principal District and Sessions Judge, Thiruvellore and would not cause any inconvenience or hardship to the petitioner. Under these circumstances, it is clear that the petitioner only with an intention to cause hardship to the respondent, has filed the

present petition for transfer and the alleged medical certificates produced by the petitioner and the prescribed medicines contained therein does not support the case of the petitioner that he is suffering from illness. Therefore, this petition is liable to be dismissed.

8. In the result, this Transfer Civil Miscellaneous Petition is dismissed with costs. The petitioner shall pay a sum of Rs.3,000/- (Rupees Three thousand only) to the Tamil Nadu State Legal Services Authority, High Court, Chennai. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal District and Sessions Judge
Thiruvellore.

2.The Member Secretary
Tamil Nadu State Legal Services Authority
High Court Madras-104

Tr.C.M.P. No.328 of 2017
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