

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.12.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

TR.CMP.Nos.398 and 516 of 2017
and
C.M.P.Nos.7885 and 10648 of 2017

Tr.C.M.P.No.398 of 2017

R.G.Nhaveenraj .. Petitioner

VS

N.Menaga .. Respondent

Prayer: Transfer Civil Miscellaneous petition filed under Section 24 of the Code of Civil Procedure seeking to withdraw the case in F.C.O.P.No.144 of 2017 on the file of the Family Court, Salem and transfer the same to the file of the Family Court, Coimbatore to be tried along with H.M.O.P.No.147 of 2016.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.R.Singaravelan,
Senior Counsel for
Mr.A.Kandasamy

Tr.C.M.P.No.516 of 2017

N.Menaga .. Petitioner

VS

R.G.Naveen Raj .. Respondent

Prayer: Transfer Civil Miscellaneous petition filed under Section 24 of the Code of Civil Procedure seeking to withdraw and transfer of H.M.O.P.No.147 of 2016 pending on the file of the Family Court, Coimbatore to the file of the Family Court, Salem to be tried along with F.C.O.P.No.144 of 2017.

For Petitioner : Mr.Singaravelan,
learned Senior Counsel for
Mr.A.Kandasamy

For Respondent : Mr.V.V.Sairam

COMMON ORDER

Transfer Civil Miscellaneous Petition No.398 of 2017 is filed by the husband in a matrimonial proceedings seeking to withdraw the F.C.O.P.No.144 of 2017 pending on the file of the Family Court, Salem and transfer the same to the Family Court, Coimbatore to be tried along with H.M.O.P.No.147 of 2016.

2. Transfer Civil Miscellaneous Petition No.516 of 2017 is filed by the wife in a matrimonial proceedings seeking to withdraw the H.M.O.P.No.147 of 2016 from the file of the Family Court, Coimbatore to the Family Court, Salem to be tried along with F.C.O.P.No.144 of 2017.

3. The summation of various proceedings between the parties is as follows:

The marriage between the parties (hereinafter, the parties are referred to as Husband and Wife) was solemnised on 24.05.2002 and two female children were born out of the wedlock. Earlier, the husband had filed H.M.O.P.No.649 of 2015 under Section 9 of the Hindu Marriage Act on the file of the Family Court, Coimbatore for restitution of conjugal rights. The same was allowed ex-parte on 11.12.2015. The wife had filed I.A.No.530 of 2016 seeking to condone the delay in setting aside the above ex-parte decree and also filed I.A.No.657 of 2016 to set aside the ex-parte decree. The said applications were allowed 23.12.2006 and H.M.O.P.No.649 of 2015 was restored to file. In the meanwhile, the husband had filed H.M.O.P.No.147 of 2016 on the file of the Family Court, Coimbatore for divorce. The wife had also filed her counter affidavit and was contesting the same. It appears that the wife had filed F.C.O.P.No.144 of 2017 on 28.02.2017 before the Family Court, Salem for the relief of restitution of conjugal rights. Already H.M.O.P.No.649 of 2015 filed by the husband under Section 9 of the Hindu Marriage Act before the Family Court, Coimbatore was pending and the husband had also filed H.M.O.P.No.147 of 2016 for divorce before the same Court. As yet another F.C.O.P.No.144 of

2017 was filed by the wife under Section 9 of the Hindu Marriage Act before the Family Court, Salem, the husband had withdrawn the H.M.O.P.No.649 of 2015, as not pressed.

4. It is brought to the notice of this Court that the wife has filed a maintenance case in M.C.No.15 of 2017 before the Family Court, Salem and also filed D.V.C.No.19 of 2017 before the Judicial Magistrate, Salem, which are also pending. In these circumstances, the petitioner in Tr.C.M.P.Nos.398 of 2017 and 516 of 2017 are seeking transfer mutually to the respective Courts where they have filed their cases.

5. The husband in Tr.C.M.P.No.398 of 2017 has stated in paragraph 16 of the affidavit filed in support of the petition that the two daughters born out of the wedlock, are raised by him and they are studying in Coimbatore. They are aged 15 and 13 years respectively. Hence, it is stated that it would be difficult for him to leave the daughters alone, who are of vulnerable age, and to travel to Salem to attend the hearings in the above said case. It is also to be seen that H.M.O.P.No.147 of 2016 filed by the husband has been contested by the wife by attending the hearings in Coimbatore. Therefore, the

husband has sought for transfer the F.C.O.P.No.144 of 2017 from the Family Court, Salem to Family Court, Coimbatore.

6. On the contrary, the wife in Tr.C.M.P.No.516 of 2017 has alleged that it would be difficult for her to undertake a journey to Coimbatore, as she has got no independent income. It is also admitted that the husband has been attending the maintenance case filed by the wife before the Family Court, Salem.

7. Heard both the parties and perused the materials available on record.

8. Learned counsel appearing for the wife has relied on 2010 (4) CTC 822 in the case of **R.Sridharan -vs- The Presiding Officer and another**, wherein, the Division Bench of this Court while interpreting Section 19(iii-a) of the Hindu Marriage Act to be a benevolent provision intending to confer benefit on the wife in respect of choice of jurisdiction held as follows:-

"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.."

9. Section 19(iii-a) of the Hindu Marriage Act would be applicable only if there is an honest attempt by a wife to avail a benefit sought to be given in the said provision. If there is a lack of *bona-fides* on the part of the wife in seeking such transfer, the same cannot be extended. In this case, as narrated earlier, the husband had filed the transfer petition to transfer the O.P filed by the wife to Coimbatore whereas as a counter blast, the wife has filed the transfer asking for the converse and the way the parties are litigating seem to have lost their faith mutually. As both the parties are expressing their difficulty

in attending the respective Family Courts, it would be appropriate to transfer the same to any of the Courts having jurisdiction where the presence of the parties is not mandatory.

10. Accordingly, without going into the merits of the case, this Court is of the opinion that both F.C.O.P.No.144 of 2017 pending on the file of the Family Court, Salem and H.M.O.P.No.147 of 2016 pending on the file of the Family Court, Coimbatore shall be transferred to Sub Court, Avinashi, which should be accessible by both the parties. Being a Sub Court, the presence of the parties is not required for each of the hearing and they can make themselves available only at the time of trial. It is open to the parties to club all the matters pending between them to the same Court by getting appropriate orders from appropriate Court.

11. With the above directions, these Tr.C.M.Ps are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

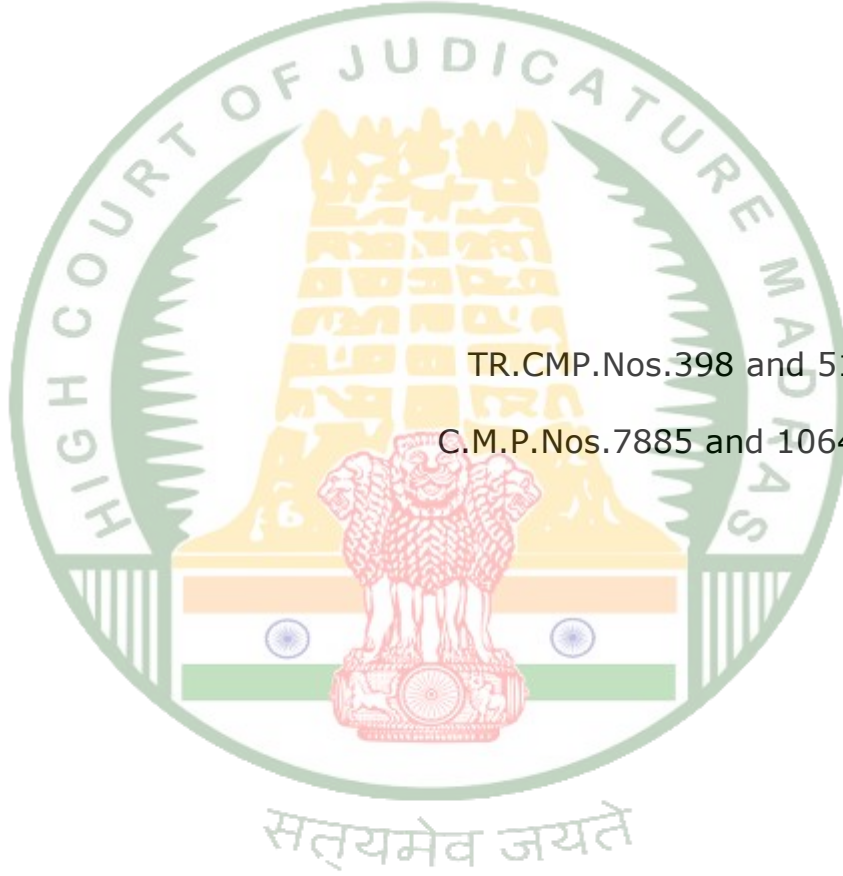
Internet: Yes

PUSHPA SATHYANARAYANA,J.,

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To

1. The Judge, Family Court, Salem
2. The Judge, Family Court, Coimbatore



TR.CMP.Nos.398 and 516 of 2017
and
C.M.P.Nos.7885 and 10648 of 2017

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