

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .20.12.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.892 of 2017
and
C.M.P.No.18169 of 2017

T.P.Padmaja

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Petitioner

Versus

Mr.Kumarakrishnan

...

Respondent

Prayer: Petition filed under Section 24 of the Civil Procedure Code praying to withdraw the petition in H.M.O.P.No.151 of 2015 from the file of learned Judge Family Court, Villupuram and transfer the same to any of the Courts in Villupuram District.

For Petitioner : Mr.K.Chandrasekaran

For Respondent : Mr.N.Suresh

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner/wife to withdraw the case in H.M.O.P.No.151 of 2015, filed by the respondent/husband for divorce from the file of Family Court Villupuram and transfer the same to the file of any other Courts in Villupuram District.

2. As both the parties are residence of Villupuram, the petitioner herein have entered appearance before the Family Court, Villupuram and had been contesting the proceedings. Whiles, the Power of Attorney of the respondent filed an Interlocutory Application in I.A.No.74 of 2017, to grant permission for the respondent to record his evidence through video conference. The said I.A. was vehemently opposed by the petitioner. However, the same was allowed, by the Family Court, Villupuram.

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3. It is stated in paragraph 6 of the affidavit filed in support of the transfer petition that the learned Family Court Judge has openly expressed that the petitioner was at fault and also commented about her

character. This according to the petitioner is an expression of bias and that she apprehended prejudice, if the matter is conducted before same Judge. It is further stated that the application for interim maintenance is still pending and without disputing the same, the main case has been taken up. Thus alleging, the petitioner sought for transfer of the H.M.O.P.No.151 of 2015 from the Family Court, Villupuram to any other Court in Villupuram having jurisdiction.

4. The transfer was opposed by the respondent by filing the counter affidavit alleging that originally H.M.O.P. No.330 of 2014 was filed by the respondent on the file of Subordinate Court, Tambaram, for divorce. Though the matter was ripe for filing the counter affidavit, a transfer petition in Tr.C.M.P.No.263 of 2015 was filed by the petitioner herein for transfer of the case to the Family Court, Villupuram. This Court, by an order dated 31.07.2015 allowed the transfer Civil Miscellaneous Petition and thereafter the case was transferred from the Subordinate Court, Tambaram to the Family Court Villupuram, only thereafter it was renumbered as Tr.C.M.P.No.151 of 2015. After transfer to Villupuram, there was an attempt for Mediation before the Mediation

Centre at Villupuram, during which time, the respondent had come down to India to participate in the Mediation proceeding. As stated earlier, when the I.A.No.74 of 2015 was allowed, the petitioner herein had filed a Civil Revision Petition in CRP (PD) No.3802 of 2017 against the same. At the time of hearing of the same, the respondent had given an undertaking that he would make himself available for cross examination on the dates that may be specified. This Court earlier also directed the completion of evidence as per time frame given. However, without obliging any of the direction given by the Court, the transfer Civil Miscellaneous Petition was filed without any merits. Hence, the respondent/husband sought for dismissal of the same.

5. The petitioner is seeking transfer alleging that the Presiding Officer had openly expressed that the petitioner was at fault and made comments about the way she was brought up in life. This perception of the Presiding Officer, according to the petitioner would be detrimental to the merits of the petitioner's case. It is further stated that the learned Family Court, Judge has prejudged the case and conducted the same in a biased manner.

6. Heard both sides.

7. The question that has to be decided is whether the transfer as prayed by the petitioner can be allowed.

8. It is a settled principle that transfer can be ordered only when the parties have the reasonable apprehension and that justice would be denied to her. Any remarks by the Presiding Officer including adverse remarks during the hearing regarding the merits of the case are not valid grounds for transfer. A case cannot be transferred on mere allegation against the Presiding Officer of the Court. The fact that the party has suspicion in this regard would not constitute the valid ground. Mere apprehension on petitioner's imaginary grounds cannot be accepted for the purpose of transfer in this case. In the case on hand, the petitioner is the one who has chosen the forum by seeking transfer earlier from Subordinate Court, Tambaram. At her instance, the matter was brought to Family Court, Villupuram and the learned Judge has tried to mediate between the parties. So far as Family Courts are concerned, it is also duty of the Presiding Officers to make earnest endeavour to

settle the matter. Any such effort made by the Presiding Officer in this regard to settle the matter, shall not interpreted by the parties as a coercive steps to come to some terms and on that basis, the case pending before the Court cannot be transferred to another Court. Admittedly, both the petitioner and the respondent are the residents of Villupuram and it is convenient for them to appear and conduct their case. The case being matrimonial dispute, only the Family Court has got the jurisdiction to try the same. The cross examination of P.W.1 is also over and it is now posted for cross examination of P.W.2, who is the father as well as the Power of Attorney of the respondent herein.

9. Normally in matrimonial proceeding filed by the husband against the wife, convenience of the wife would be the primary consideration. In this case also earlier it was transferred to Villupuram to suit the convenience of the petitioner/wife. From the reading of the affidavit also, this Court is unable to see any bias as alleged. Only in the argument, serious allegations against the Presiding Judge impugning his fairness and impartiality are made. In the absence of any Special instances of bias, the Presiding officer cannot be attributed with bias.

Merely because harsh language is used by the Presiding officer, it will not be a ground for transfer. As already trial has commenced and the petitioner's evidence is also over, it would be appropriate to continue the evidence with the same Judge as it would be easy for the Presiding Officer to notice the demeanor of the witnesses which would be helpful in deciding the case. Therefore, merely because the interim orders passed by the Presiding Officer, went against the petitioner it would not be fair to make allegations against the Presiding Officer and ask for transfer on that ground.

10. In the light of the above, the petitioner is not entitled to transfer as sought for and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The parties are directed to co-operate in the early disposal of the O.P.

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PUSHPA SATHYANARAYANA, J

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To

The Family Court, Villupuram



Tr.C.M.P.No.892 of 2017
and
C.M.P.No.12189 of 2017

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