

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

Tr.CMP.No.665 of 2016
and C.M.P.No.17415 of 2016

P.Prasanna .. Petitioner
Vs

G.Pravin Gavaskar .. Respondent

Prayer:- Petition filed under Section 24 and r/w.151 of C.P.C., to withdraw H.M.O.P.No.68 of 2016 from the file of Sub Court, Tuticorin (for restitution of conjugal rights) and transfer the same to the file of the Sub Court, Namakkal for being tried along with H.M.O.P.No.7 of 2016 (for divorce), pending therein

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.A.M.Nataraj

ORDER

The transfer petition has been filed to withdraw the proceedings in H.M.O.P.No.68 of 2016 from the file of Sub Court, Tuticorin and transfer it to the file of Sub Court, Namakkal for being tried along with H.M.O.P.No.7 of 2016 pending before Sub Court, Namakkal.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 08.6.2011. Both the petitioner and respondent are doctors by profession. In the wedlock, a male child was born on 27.3.2012. The petitioner was put to physical as well as mental cruelty by the respondent, in connection with which, she was forced to leave the matrimonial home. The petitioner filed HMOP.No.7 of 2016 for dissolution of marriage before the Sub Court, Namakkal. The respondent as a counter blast filed HMOP.No.68 of 2016 for restitution of conjugal rights before the Sub Court, Tuticorin. The said petition in HMOP.No.68 of 2016 was filed only after entering appearance in the petition filed by the petitioner for divorce before Sub Court, Namakkal.

3. According to the petitioner, at the time of filing this transfer petition, she was doing Master Decree in Radiology in Kilpauk Medical College, Chennai. It is

represented by the learned counsel for the petitioner that at present the petitioner is working as an Assistant Professor in Government Medical College and Hospital, Salem. It is contended by the learned counsel for the petitioner that right from their marriage both resided at Namakkal and even after separation, the husband resided at Namakkal. In such a case, the husband filed the petition for restitution of conjugal rights before Sub Court, Tuticorin, clearly proves that the respondent only with an intention to harass the petitioner has filed the HMOP.No.68 of 2016 and not for re-union. Hence, she denies the submission of the respondent that he resides at Tuticorin.

4. It is also submitted by the petitioner that prior to the filing of this transfer petition, the petitioner has filed a transfer petition before this Court in Tr.CMP.No.235 of 2016, in which the convenience of both parties were considered by the petitioner. At that time, the respondent was employed in a hospital at Trichy. The distance between Trichy to Namakkal is less than 100 kms, whereas the distance between Trichy to Tuticorin was nearly 300 kms. But the same was withdrawn by the petitioner, based on the interest shown by the husband for compromise and settlement. But the said compromise is in vain. Thereafter, the petitioner has filed the present transfer petition.

5. The respondent is stated to have selected in Indian Revenue Service and he is now undergoing training at Hyderabad. The learned counsel appearing for the respondent submitted that it will be difficult for the respondent to appear before the Sub Court, Namakkal and hence prayed for early disposal of the transfer petition.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

7. 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].

8. Admittedly, now the respondent is not residing or working at Tuticorin, and at present he is undergoing training at Hyderabad. Taking into consideration the above facts and convenience of both parties and to avoid conflicting decisions, both HMOP.No.7 of 2016 pending on the file of Sub Court, Namakkal and HMOP.No.68 of 2016 pending on the file of the Sub Court, Tuticorin are to be tried together in the same Court, for joint trial. The Sub Court, Tuticorin is directed to transmit all the records pertaining to HMOP.No.68 of 2016 to the file of Sub Court, Namakkal, within a period of two

weeks from the date of receipt of a copy of this order. On receipt of the records, the learned Sub Judge, Namakkal, is directed to dispose of the said HMOP proceedings at the earliest.

7. Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge,
Tuticorin.
2. The Subordinate Judge,
Namakkal.

+1cc to Mr.Shivakumaran,Advocate sr.44556

TR.CMP.No.665 of 2016
& C.M.P.No.17415 of 2016

mg(co)
ss(18/7/2017)

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