

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

TR.CMP.No.738 of 2016
and

C.M.P.No.19107 of 2016

P.Catherine Beaula .. Petitioner
vs

J.Sam Christopher Duraisingh .. Respondent

Prayer: Transfer Civil Miscellaneous petition filed under Section 24 of the Code of Civil Procedure seeking to withdraw IDOP No.22 of 2016 pending on the file of the Principal District Court, Virudhunagar at Srivilliputtur and to transfer the same to the file of the I Additional Family Court, Chennai to be tried along with M.C.No.240 of 2016.

For Petitioner : Mr.P.Rajendra Kumar
For Respondent : Mr.M.Ponnarasu

ORDER

The wife, in a matrimonial dispute, has filed this transfer civil miscellaneous petition seeking to withdraw IDOP No.22 of 2016, filed by the husband, pending on the file of the Principal District Court, Virudhunagar at Srivilliputtur and to transfer the same to the file of the I Additional Family Court, Chennai to be tried along with M.C.No.240 of 2016, filed by her.

2. It is the case of the petitioner/wife that she is the legally wedded wife of the respondent and after marriage, they both lived in Chennai and Theni for some time and thereafter, they lived in Australia. The petitioner has alleged that the respondent's family subjected her to cruelty by demanding dowry, for which the respondent was also supporting. Since she was continuously tortured by the respondent and his family, she has returned to Chennai and staying along with her parents. According to the petitioner, the husband is working in Australia and is earning a sum of Rs.6 lakhs per month. As she has lost her hope of reunion with the respondent in her matrimonial home,

she has lodged a complaint with the All Women Police Station, Mambalam for return of her jewellery. The case is pending enquiry before the Welfare Officer. In the meantime, she has filed the M.C.No.240 of 2016 before the Family Court at Chennai seeking maintenance in a sum of Rs.2,40,000/- per month. As the respondent has filed a divorce petition before the Principal District Court, Virudhunagar, which is subsequent to the filing of her maintenance petition, she has filed the above petition seeking transfer of the divorce petition filed by the respondent.

3. Per contra, it is alleged by the respondent/husband that the petitioner/wife was suffering from contagious type of Tuberculosis and also low level of Vitamin-D deficiency and that the petitioner's family hiding the said fact had given in marriage to him. When the petitioner and the respondent had gone to Australia, the authorities took custody of both of them and directed the petitioner to continue with the medicine for one year and they were not allowed to go out. According to him, the marriage was not consummated and she has voluntarily left the matrimonial home. She also threatened to commit suicide by consuming poison and always used to disturb him while he is working in the office. Since, the respondent felt that it will be difficult for him to continue his marital life with her, has filed the petition seeking Divorce before the Principal District Court at Virudhunagar.

4. Heard both sides.

5. From the perusal of the typed set of papers, filed by the petitioner/wife, it is seen that she has sought transfer only on the ground that, the maintenance petition filed by her is prior in point of time than the divorce petition filed by the respondent/husband. Excepting that no other reason has been stated by the petitioner/wife that she is working in Chennai and hence it will be difficult for her to travel to Virudhunagar, etc.

6. In the matrimonial proceedings, the convenience of the party is the main criteria for transfer to the place, where the petition filed by the wife is pending. Though in this petition, she has stated that her maintenance petition is prior in point of time, even as per her own typed set filed, it is seen that the respondent/husband has filed the divorce petition earlier, viz., on 23.03.2016 itself and she has filed her petition only on 06.06.2016. Therefore, that cannot be a ground for transfer. Further, the respondent/husband has filed the divorce petition only before the Principal District Court, Virudhunagar and before the District Court, the parties need not appear for each and every hearing and she can very well engage a counsel to attend to the hearings. Only during the trial, the

parties have to appear in person. Even during the course of taking evidence, it is always open to the parties to have a Video Conferencing trial, which is now permissible in law.

7. In view of the above stated reasons, I do not find any merit in this transfer civil miscellaneous petition. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Principal District Judge,
Virudhunagar at Srivilliputtur.

2. The I Additional Family Court,
Chennai.

+1cc to Mr.Rajendra Kumar, Advocate, S.R.No.11052

+1cc to Mr.Ponnarasu, Advocate, S.R.No.11134

RK(CO)

RS(03/03/2017)

सत्यमेव जयते

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