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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.08.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.358 of 2017
and C.M.P.(MD) No.3904 of 2017

M.Manimala ... Appellant/Respondent

Vs.

V.Muthuraman ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, praying to call for the entire records connected with the decree and order dated 21.11.2016 made in H.M.O.P.No.96 of 2016 on the file of the Honourable Family Court, Tirunelveli and set-aside the same as illegal.

For Appellant : Mr.S.Malaikani

For Respondent : Mr.A.Mohamed Yusuf

JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J**)

The wife who suffered a decree of divorce at the hands of the husband in H.M.O.P.No.96 of 2016 on the file of the Family Court, Tirunelveli dated 21.11.2016 is the appellant in the Civil Miscellaneous Appeal.

2.H.M.O.P.No.96 of 2016 was filed by the husband/respondent for divorce alleging cruelty. A counter affidavit has been filed on 15.07.2016 by the appellant. As the respondent happens to be a practising lawyer in the District Court, Tirunelveli, the appellant filed Tr.M.P. (MD) No.398 of 2016 for transfer of H.M.O.P.No.96 of 2016 from the file of Family Court, Tirunelveli to Sub Court, Valliyoor. Thereafter, the said Transfer petition was withdrawn and another petition to transfer the H.M.O.P.No.96 of 2016 to Family Court, Madurai has been filed. In the meanwhile, when the transfer petition was pending, the H.M.O.P.No.96 of 2016 was taken up for hearing and on the ground that the petitioner was not cooperating a decree for divorce was granted. The conduct of the appellant in doubting lawyers practising in Tirunelveli and the statement made that the



respondent is in the habit of drinking is abusive and contrary to the earlier statement about his performance as lawyer the petition filed was allowed. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant would submit that petitions are pending in the Family Court from the year 2014 onwards. However, undue urgency has been shown to the present one. The appellant has withdrawn the earlier transfer petition in order to file a fresh petition to transfer the petition to a different place. The Court below has not taken into consideration the grounds raised by the respondent while decreeing petition filed and granting the relief.

4. The learned counsel appearing for the respondent submitted that several opportunities were given to the appellant. It is not as if on the first hearing a decree was passed. The appellant is in the habit of continuously harassing the respondent. The conduct of the appellant was carefully taken note of by the Court below. Therefore, no interference is required.

5. We have considered the rival submissions and perused the materials available on record.

6. A decree for divorce can only be granted on the grounds mentioned in Section 13 of the Hindu Marriage Act. The conduct of the parties can be an incidental factor. Statutes prescribe the satisfaction to be recorded. A perusal of the impugned order would show that the Court below has not considered as to whether the respondent has satisfied the ground for divorce, namely, cruelty. Even in a case of an ex parte order a prima-facie consideration is there. This is lacking in this case. The fact that petitioner earlier filed transfer petition and thereafter another is not in dispute. The apprehension raised by the appellant is reasonable. According to the appellant, every other counsel she wants to engage would only advise her to compromise the matter by granting a decree for divorce. This alone, though not proved, be sufficient to transfer the matter. After all, justice should appear to be done. Hence, fairness requires that while setting aside the order passed by the Court below, the matter has to be transferred to some other Family Court.

7. Accordingly, this Civil Miscellaneous Petition is allowed and the order dated 21.11.2016 made in H.M.O.P.No.96 of 2016 by the Family Court, Tirunelveli is set aside. Consequently, a direction is issued to transfer H.M.O.P.No.96 of 2016 from the file of Family Court, Tirunelveli to Family Court, Tuticorin. The Family Court, Tirunelveli is directed to send the case papers of H.M.O.P.No.96 of 2016 pending on its file to Family Court, Tuticorin forthwith. After receipt of the papers, the Family Court shall dispose of H.M.O.P.96 of 2016 within a period of four months



from the date of receipt of a copy of this order. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

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Sub Assistant Registrar

To

1) The Judge,
Family Court,
Tirunelveli.

2. The Judge,
Family Court,
Tuticorin.

+1cc to Mr.S.MALAIKANI, Advocate, SR.73559

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SJ

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