



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2017

CORAM :

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Tr.C.M.P(MD)No.190 of 2017

Malarvizhi

... Petitioner/Petitioner

Vs.

Kodi

... Respondent/Respondent

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the case in H.M.O.P.No.185 of 2005 from the file of the learned Subordinate Judge of Thirumangalam and transfer the same to the file of the Family Court of Madurai to try along with H.M.O.P.No.73 of 2014 (Old No.374 of 2005).

For Petitioner : Mr.B.Chandramohan

For Respondent : Mr.R.Devaraj

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O R D E R

The wife, who is the petitioner in H.M.O.P.No.185 of 2005, on the file of the Sub Court, Thirumangalam, is the petitioner herein. She seeks transfer of the same to the Family Court at Madurai to be tried along with H.M.O.P.No.73 of 2014 (old H.M.O.P.No.374 of 2005).

2.This case has a chequered history. Originally the wife filed Tr.C.M.P.(MD) No.391 of 2013, seeking transfer of H.M.O.P.No.374 of 2005 (H.M.O.P.No.73 of 2014) from the file of Family Court, Madurai to any other competent Court at Madurai. The said application was not opposed by the husband. Hence, this Court by order dated 06.12.2013, transferred H.M.O.P.No.374 of 2005 (H.M.O.P.No.73 of 2014) to the file of II Additional Sub Court, Madurai. Having invited the order, the petitioner/wife filed Civil Appeal No.21 of 2015 before the Hon'ble Supreme Court against the order dated 06.12.2013. The Hon'ble Supreme Court by order dated 05.01.2015, set aside the order of transfer made in Tr.C.M.P.(MD) No.391 of 2013 and gave liberty to the parties to move application before the High Court for transfer of the case from the II Additional Sub Court, Madurai to Family Court, Madurai. Accordingly, the husband, who is respondent herein, filed Tr.C.M.P.(MD) No.574 of 2016. By order dated 20.03.2017, this Court transferred the proceedings in H.M.O.P.No.374 of 2005 (H.M.O.P.No.73 of 2014) from the file of II Additional Sub Court, Madurai to Family Court, Madurai. In and by order dated



20.03.2017, this Court had also directed the Family Court, Madurai, to dispose of H.M.O.P.No.374 of 2005 (H.M.O.P.No.73 of 2014) on or before 31.07.2017. At this juncture, the petitioner/wife has come forward with the present application for transfer.

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3.I have heard learned counsel for the petitioner as well as the learned counsel for the respondent.

4.Mr.R.Devaraj, learned counsel for the respondent would contend that H.M.O.P.No.185 of 2005 is not pending as on date. According to the learned counsel, the said H.M.O.P. was dismissed for default on 06.03.2013. I.A.No.150 of 2013 filed by the petitioner/wife, seeking restoration was allowed on 04.02.2014 on payment of cost of Rs.250/-. Since the petitioner did not pay the costs, the said application was dismissed, which resulted in lodging of complaint against the Presiding Officer by the petitioner before this Court. Then the said Presiding Officer recalled the order dated 04.02.2014 and restored I.A.No.150 of 2013 on 17.09.2015. Since the petitioner/wife did not appear before the Court, the said I.A. came to be dismissed for default on 19.10.2016. It is also stated that the application to restore I.A.No.150 of 2013 in I.A.No.40 of 2017 alone is pending before the Sub Court, Thirumangalam.

5.The prayer in this petition is to transfer H.M.O.P.No.185 of 2005 from the file of Sub Court, Thirumangalam to Family Court, Madurai. Admittedly, H.M.O.P.No.185 of 2005 is not pending. Further, this Court has directed the Family Court, Madurai to dispose of H.M.O.P.No.374 of 2005 (H.M.O.P.No.73 of 2014) on or before 31.07.2017. In the circumstances, I am convinced that this petition has been filed only to protract the proceedings. Further, the proceedings are 12 years old. Hence, I am not inclined to entertain the present request for transfer of a proceeding which is not pending as on date.

6.Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

1.The Judge, Family Court, Madurai.

2.The Subordinate Judge, Thirumangalam, Madurai District.

+One cc to Mr.R.Devaraj, Advocate, SR.No.59667

sj

<https://hcservicescourts.gov.in/cases/4/22/6/2017>

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