



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2017

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WEB COPY

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

TR.C.M.P (MD) No.272 of 2017

M.Shalini ...Petitioner/Respondent/Wife

Vs.

M.Venkatkumar ... Respondent/Petitioner/Husband

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw and transfer the petition in H.M.O.P.No.71 of 2017 pending on the file of the Subordinate Court, Uthamapalayam to the file of the Family Court, Madurai.

For Petitioner : Mr.M.Gandhi
For Respondent : No Appearance

ORDER

This Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.71 of 2017 pending on the file of the Subordinate Court, Uthamapalayam and transfer the same to the file of the Family Court, Madurai.

2.The petitioner herein is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 31.05.2012 as per Hindu Rites and Customs. From the date of marriage, the petitioner noticed that the respondent was in uncontrollable inebriated state and thereafter she came to know that he was a habitual drunkard. Having known her fate, the petitioner tried to adjust with the respondent by controlling his such habit, but it ended in vain. The mother of the respondent supported and encouraged him against her. Finally, the petitioner was driven out by the respondent with the support of his mother. Thereafter, the petitioner was deserted by her husband and now she is staying in her parents house. The petitioner delivered a baby on 15.07.2015 in her parents house and her parents informed about the delivery of the baby to the respondent and his family, but the respondent and his relatives did not come and see the baby. The respondent called the petitioner and told that the pregnancy is not due to him and the baby is not belonged to him. Thereafter, the petitioner, the petitioner's father along with some mediators went to the respondent's house and had a compromised and pacified



talk with the respondent and left the petitioner with him. But after three days, the respondent again in his continuous inebriated mood had a quarrel with the petitioner and beaten her, strangled her throat and drove her out from the house. Therefore, the petitioner again back to her parents house. In such situation, the respondent filed H.M.O.P.No.71 of 2017 on the file of Subordinate Court, Uthamapalayam for restitution of conjugal rights. The petitioner filed M.C.No.79 of 2017 on the file of the Family Court, Madurai for maintenance. The petitioner is living under the roof of her parents at Madurai sharing the meagre income of her father, having a two year old baby. Therefore, it is not possible for the petitioner to appear before the Sub Court, Uthamapalayam for hearing and therefore, prayed for transfer of the same to the Family Court, Madurai, where she is residing with her parents.

3.Though notice has been served on the respondent, he has neither appeared through his counsel nor in person. Heard the learned counsel for the petitioner and perused the materials available on record.

4.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)**. I am satisfied with the reasons stated in the affidavit filed in support of this petition.

5. Taking into consideration of the facts and circumstances of the case and in the interest of justice, this Transfer Civil Miscellaneous Petition is allowed with the following directions:-

i) The learned Subordinate Judge, Uthamapalayam, is directed to transmit the entire records in H.M.O.P.No.71 of 2017 to the file of the Family Court, Madurai within a period of two weeks from the date of receipt of copy of this order.

ii) the learned Family Court Judge, Madurai after obtaining the records on transfer, is directed to dispose of both H.M.O.P.No.71 of 2017, as expeditiously as possible in accordance with law.

No costs.

Sd/-

Assistant Registrar(Records)

/True copy/



To

1.The Subordinate Judge, Uthamapalayam.

2.The Judge,
Family Court, Madurai.

+1 cc to Mr.M.Gandhi , Advocate in SR.No. 71765

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AE/MR KKR/SAR1/28.08.2017/3P/4C

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