



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.08.2017
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P.(MD)No.328 of 2017
and C.M.P.(MD)No.6932 of 2017

WEB COPY

Soundar ... Petitioner/Respondent
Vs.
Uma Parameswari ...Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. to withdraw and transfer the proceedings in H.M.O.P. No.260 of 2016 on the file of the Family Court, Tirunelveli to the Family Court, at Madurai or any other competent Court at Madurai.

For Petitioner :Mr.K.Vamanan
For Respondent :Ms.P.Sepana @ Sree

J U D G M E N T

This Transfer Civil Miscellaneous Petition is filed to transfer H.M.O.P. No.260 of 2016 from the file of the Family Court, Tirunelveli to the Family Court, at Madurai or any other competent Court at Madurai.

2. The petitioner is the husband of the respondent. The petitioner filed a petition in H.M.O.P.No.127 of 2015 before the Family Court, Madurai, seeking divorce from the respondent herein. The respondent/wife marked her appearance through a counsel and also filed her counter in the said divorce case. In her detailed counter, she admitted allegations made against her. Further she admitted that the girl child born out of the wedlock also is living with the petitioner only. In the said divorce petition, trial was commenced and the petitioner deposed his evidence and the matter was posted for cross-examination. In such circumstances, the respondent/wife filed a transfer petition in Tr.C.M.P.(MD) No.312 of 2016 before this Court to drag on the proceedings. The petitioner entered appearance and explained the stage of the divorce case. This Court, considering the stage of the case, dismissed the Tr.C.M.P.(MD) N.312 of 2016 on 26.10.2016.

3. After dismissal of the said Transfer Petition, on 08.12.2016 the respondent/wife filed H.M.O.P.No.260 of 2016 on the file of the Family Court, Tirunelveli for restitution of conjugal rights. Thereafter, the petitioner filed Tr.C.M.P.No.139 of 2017 seeking transfer the same to Family Court, Madurai from Tirunelveli. Subsequent to the filing of the said Transfer Petition, the Family Court, Tirunelveli granted ex-parte decree in favour of the respondent on 17.02.2017 and the same was informed before this Court. This Court dismissed Tr.C.M.P.(MD) No.139 of



2017 filed by the petitioner on 28.04.2017 granting liberty to file a fresh Transfer petition after restoration of H.M.O.P.No.260 of 2016.

4. The petitioner filed the restoration petition in I.A.No.149 of 2017 in H.M.O.P.No.260 of 2016 before the Family Court, Tirunelveli and the same was allowed on 17.07.2017 and based on the liberty given by this Court in Tr.C.M.P.No.139 of 2017, the present transfer petition has been filed.

5. The learned counsel for the respondent/wife would oppose this Transfer application.

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

7. While passing the order in Tr.C.M.P.(MD) No.139 of 2017, the learned Judge has observed that the Family Court, Tirunelveli would have done well to adopt a pragmatic approach in the light of the circumstances. The pendency of the petition for divorce and the request of the wife to transfer the petition to the Family Court, Tirunelveli has been rejected by this Court must have been taken note of. It would have been in the interest of justice, if the Family Court had not hurried into passing an order of restitution because of the absence of husband for one hearing. Such endorsement made by this Court would show the attitude of the respondent/wife, by which the case has been dealt with. Generally this Court would take into consideration the convenience of the wife. But in the present case, in view of the earlier proceedings, this Court has no other option except to allow this petition.

8. In the result, this petition is allowed with the following directions:

i) The learned Judge, Family Court, Tirunelveli, is directed to transmit the entire records in H.M.O.P. No.260 of 2016 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 Judge, Family Court, Madurai, after obtaining the records on transfer, is directed to dispose of H.M.O.P.Nos.127 of 2015 and 260 of 2016 jointly, as expeditiously as possible, in accordance with law.

No costs. Consequently, connected C.M.P.(MD) No.6932 of 2017 is closed.

Sd/-

Assistant Registrar



To,

1.The Family Court,
Tirunelveli.

2.The Family Court,
Madurai.

+1cc to M/S.K.VAMANAN, Advocate SR.No.72692

CM

MAS/SV-MMS/SAR2:04.09.2017:3P-4C

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