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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P. (MD) Nos.438 & 439 of 2017
and
C.M.P. (MD) Nos.8734 & 8735 of 2017

Kathirvel

...Petitioner/Husband
(in both petitions)

Vs.

K.Saranya

...Respondent/Wife
(in both petitions)

COMMON PRAYER :- Transfer Civil Miscellaneous Petitions filed under Section 24 of the Code of Civil Procedure to withdraw the cases in H.M.O.P.Nos.192 & 305 of 2014, pending on the file of the Family Court, Dindigul and transfer the same to the Principal District Court, Madurai.

For Petitioner
in both petitions :Mr.M.Veilkaniraju

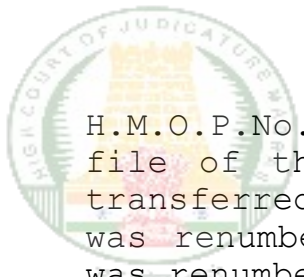
For Respondent
in both petitions :Mr.S.Palanivelayutham

COMMON ORDER

Both the Transfer Civil Miscellaneous Petitions are filed seeking transfer of the H.M.O.P.Nos.192 & 305 of 2014, pending on the file of the Family Court, Dindigul, to the Principal District Court, Madurai.

2. The short facts which are necessary for disposal of this transfer civil miscellaneous petition is set out hereunder:-

2.1. The petitioner herein is the husband of the respondent herein. Their marriage was solemnized on 06.06.2011. Due to some misunderstanding, their marriage life went into rough weather. Consequently, the petitioner filed a petition for divorce before the Family Court, Tiruchirappalli in H.M.O.P.No.281 of 2013 and his wife, who is the respondent herein filed a petition in



H.M.O.P.No.49 of 2013 for restitution of conjugal rights, on the file of the Subordinate Court, Periyakulam and both matters were transferred to the Family Court, Dindigul and H.M.O.P.No.281 of 2013 was renumbered as H.M.O.P.No.192 of 2014 and H.M.O.P.No.49 of 2013 was renumbered as H.M.O.P.No.305 of 2014.

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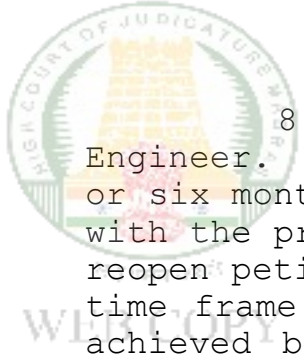
3. The learned Counsel for the petitioner would submit that the petitioner is working as a Marine Engineer and his nature of job is that every six months, he has to be on ship for sailing and once sailing is started, he will be relieved from his job only after 3 to 6 months, he will be off the shore. The case of the petitioner is that the learned Judge, Family Court, Dindigul adjourned the matter frequently though the petitioner was representing through his Power of Attorney and during his presence, the matter was adjourned and when he was gone to abroad, the matter was taken up and the evidence was closed. Therefore, the petitioner filed a petition for reopen the evidence, however, it was not considered by the learned Judge, as the petitioner has not filed the application properly and that was returned for compliance. He would further submit that the learned Judge was not inclined to reopen the application by stating that the petitioner was trying to prolong the matter. By attributing bias against the learned Judge, the petitioner is before this Court seeking transfer of H.M.O.Ps.

4. The learned Counsel for the respondent would deny all the contentions raised by the petitioner and he would submit that there is no bias as alleged by the petitioner and the learned Judge has legally returned the papers and he would draw the attention of this Court to the returned papers which were filed in the typed set of papers.

5. The learned Counsel for the petitioner would submit that since the petitioner is working as a Marine Engineer, he will be in abroad for a period of six months and he will be on leave for another period of six months. Though the said fact is known to the learned Judge, the learned Judge has not given time to the petitioner to examine the witness and proceed with the matter.

6. However, the learned Counsel for the petitioner would submit that the petitioner would not insist for transfer, it is sufficient for the petitioner if he is allowed to reopen the evidence and to proceed the matter further and to complete the proceedings within a time frame so that the petitioner would also be able to participate in the proceedings. The learned counsel for the petitioner would further contend that the return has been complied and the petitioner himself had filed the petition for reopening and prayed for numbering the petition and to complete the trial within a time frame, for which the learned counsel for the respondent has got no objection. He also prayed for early disposal of the suit.

7. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials available on record.



8. There is no dispute that the petitioner is a Marine Engineer. Naturally, he will be off the shore for a period of four or six months as per the demand. Further, he is ready to co-operate with the proceedings. The only request of the petitioner is that the reopen petition to be heard and proceedings to be completed within a time frame. If the petitions are kept pending, no purpose would be achieved by both parties. The learned counsel for the petitioner would submit that the returns are already complied with. Therefore, in order to give quietus to the issue on hand and to meet the ends of justice, without going into the merits of the case, this Court directs the learned Judge, Family Court, Dindigul to entertain the reopen petition filed by the petitioner and to complete the trial in both cases within a period of three months from the date of receipt of a copy of this order without being influenced by any of the observations made by this Court. It is made clear that both parties have to extend their co-operation to complete the proceedings as directed by this Court.

9. With the above directions, both the Transfer Civil Miscellaneous Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To,
The Judge, Family Court,
Dindigul.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, (2 copies)
Madurai.

+One cc to Mr.S.Palani Velayutham, Advocate, SR.No.80684
+One cc to Mr.C.Susikumar, Advocate, SR.No.80782

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