



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Tr.C.M.P. (MD) No.151 of 2016

and

C.M.P. (MD) No.2608 of 2016

Minu Chowdhri : Petitioner/Respondent

vs.

B.Manavalan : Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure to withdraw the case in H.M.O.P.No.94 of 2014 from the file of the Sub Court, Theni and transfer the same to any other Family Court in Chennai.

For Petitioner : Mr.M.Mohamed Muzammil
For M/s.A.Madhumathi

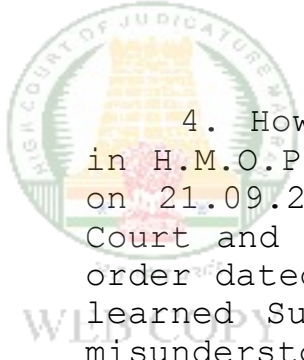
For Respondent : Mr.S.Venkatesh

ORDER

Heard Mr.M.Mohamed Muzammil, learned counsel appearing for the petitioner and Mr.S.Venkatesh, learned counsel appearing for the respondent.

2. The above Transfer Civil Miscellaneous Petition has been filed by the petitioner/wife to transfer H.M.O.P.No.94 of 2014 on the file of Sub Court, Theni, to any other Family Court, Chennai, filed by the respondent/husband, for divorce.

3. This Court granted an order of interim stay of further proceedings on 15.03.2016 and a copy of the order was served upon the respondent/husband on 29.03.2016 itself. A memo was also filed before the Trial Court on 16.03.2016.



4. However, the respondent filed an advance hearing petition in H.M.O.P.No.94 of 2014 filed by him and got a decree of divorce on 21.09.2016. The said fact was brought to the notice of this Court and this Court called for a report from the Trial Court, by order dated 04.01.2017. Accordingly, a report has been sent by the learned Subordinate Judge, Theni, on 20.01.2017 stating that he misunderstood the order passed in Tr.C.M.P.No.857 of 2015, which was dismissed by the Principal Bench at Madras, and passed an order, without noting the fact that the stay has been granted by the Madurai Bench. Since the Judicial Officer, by mistake, passed the order and the respondent/husband also did not point out the Judicial Officer about the stay order passed by this Court, the exparte decree dated 21.09.2016, in H.M.O.P.No.94 of 2014 passed by the Trial Court is not valid and the same is set aside.

5. The petitioner/wife has filed the present Transfer Civil Miscellaneous Petition stating that she is living in Chennai along with the child, aged about two years and it is very difficult for her to come down to Theni to appear before the Trial Court to contest the case.

6. Though Mr.S.Venkatesh, learned counsel for the respondent opposed the said contention, even as per the Act, the Court, which has got jurisdiction over the place of wife, can entertain the petition regarding matrimonial cases. Moreover, the Honourable Supreme Court also held that the convenience of wife should be taken into consideration. Theni is situated about 650 Kilometres away from Chennai and, therefore, it is very difficult for the petitioner/wife to come down to Theni along with the child, which also involves expenditure every time. Therefore, interest of justice requires to transfer the case.

7. Accordingly, H.M.O.P.No.94 of 2014 is transferred to the file of the First Additional Family Court, Chennai, wherein M.C.No.20 of 2017 filed by the petitioner/wife is pending, for joint trial. The First Additional Family Court, Chennai, is directed to dispose of the case on or before 30.04.2017, by taking note of the fact that the exparte decree dated 21.09.2016, passed by the Sub Court, Theni, in H.M.O.P.No.94 of 2014, has been set aside by this order.

8. The Transfer Civil Miscellaneous Petition stands ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/



To

1.The Subordinate Judge,
Theni.

2.The First Additional Family Court,
Chennai.

+1 cc to M/s.A.Madhumathi, Advocate in SR.No. 5761

SML

MAS/CM-MSA/09.02.2017 :3P/4C

Order made in
Tr.C.M.P. (MD) No.151 of 2016
Dated:- **31.01.2017**