



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.06.2017

PRONOUNCED ON : 16.06.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Tr.CMP (MD) Nos.349 of 2016 and 109 of 2017

V.K.A.Vijayarajan .. Petitioner-Tr.CMP.349/2016
Respondent-Tr.CMP.109/2017

Vs

Rajeswari .. Petitioner-Tr.CMP.109/2017
Respondent- Tr.CMP.349/2016

Prayer:- Tr.CMP (MD) No.349 of 2016 is filed to withdraw the HMOP.No.60 of 2015 on the file of the Principal Sub Court, Dindigul and transfer the same to the Sub Court, Uthamapalayam, Theni. Tr.CMP (MD) No.109 of 2017 is filed to withdraw the HMOP.No.42 of 2015 on the file of the Sub Court, Uthamapalayam and transfer the same to the file of Sub Court, Dindigul to be tried along with HMOP.No.60 of 2015.

For Petitioner : Mr.K.Guhan-Tr.CMP.349/2016 and
Respondent in Tr.CMP.109/2017

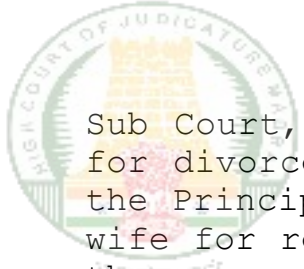
For Respondent : Mr.Niranjana S.Kumar-Tr.CMP.349/2016
and for Petitioner in Tr.CMP.109/2017

ORDER

Tr.CMP.No.349 of 2016 has been filed by V.K.A.Vijayarajan, who is the Respondent in HMOP.No.60 of 2015 on the file of Principal Sub Court, Dindigul, which has been filed by his wife Rajeshwari, seeking the relief of restitution of conjugal rights, to withdraw the HMOP.No.60 of 2015 on the file of the Principal Sub Court, Dindigul and transfer the same to the Sub Court, Uthamapalayam.

2. Tr.CMP.No.109 of 2017 has been filed by Rajeshwari, who is the Respondent in HMOP.No.42 of 2015 on the file of Sub Court, Uthamapalayam, which has been filed by her husband V.K.A.Vijayarajan, seeking divorce, to withdraw the HMOP.No.42 of 2015 on the file of the Sub Court, Uthamapalayam and transfer the same to the Sub Court, Dindigul.

3. In effect, among the other petitions pending, seeking
<https://hservices.ecourts.gov.in/hservices/>
divorce between the same parties, these two Tr.CMPs have
been filed with respect to HMOP.NO.42 of 2015 on the file of the



Sub Court, Uthamapalayam, which has been initiated by the husband for divorce and with respect to HMOP.No.60 of 2015 on the file of the Principal Sub Court, Dindigul, which has been initiated by the wife for restitution of conjugal rights. In Tr.CMP.No.349 of 2016, the prayer is to withdraw HMOP.No.60 of 2015 and transfer the same to the Sub Court, Uthamapalayam. In Tr.CMP.No.109 of 2017, the prayer is to withdraw HMOP.No.42 of 2015 and transfer the same to the Sub Court, Dindigul.

4. Substantial arguments were advanced by the learned counsel on either side. It appears that the litigants were married on 10.06.1992. It was an arranged marriage. They were blessed with a daughter and a son. The daughter chose to marry a person, whom she had selected. It has led to differences of opinion within the family and subsequently, the said marriage was annulled by consent and the daughter has been remarried to another person, who appears to be more favourable to the parties herein. At any rate, there had been substantial differences of opinion, leading to various cases being filed and in fact, one of the cases has been pending on a complaint given by the daughter alleging kidnapping by her own parents. They have also a son, who is said to be residing with the father.

5. Both the parties seek to file these Tr.CMPs, claiming that it would be advantageous to them and totally ignoring the difficulties, the other party would be put by such transfer. In particular, the Petitioner in Tr.CMP.109 of 2017, the wife has pleaded extreme penury and stated that she is living with her parents and also that there is no money for her day-to-day life and food. She has also stated that it was not possible for her to travel to Uthamapalayam to defend the case. Before this court, she is represented by a counsel, who has appeared as pro bono.

6. The Honourable Supreme Court in 2008 3 SCC 659 (Kulwinder Kaur Alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others) has given the factors to be taken into account while considering transfer of the suit. In paragraph 23, it had been held as follows:-

"23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a



suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order. "

7. In this case, which arises out of a matrimonial dispute, the court has to be more sensitive while deciding the status of the parties, which they would be put by any order of transfer. It would be highly inappropriate if the wife is forced to go to Uthamapalayam to face the proceedings and it would also be unreasonable if the husband is asked to go to Dindigul because the distance between the two place is quite substantial. Without advertting to the merits of the case, but however, taking into account the various stands put forward by the parties, I hold that the ends of justice would be served if both the HMOPs are transfer to the Principal Sub Court, Periyakulam and the wife has to be compensated with the travel expenses to Periyakulam and the incidental expenses, by the husband. It had been informed by this court that travel to Periyakulam from the place where the wife now resides would not be of much difficulty and is the closest place where the wife now resides. The decision with respect to the expenses is rendered taking into account the reasoning given in the decision of the Honourable Supreme Court reported in 2005 12 SCC 301 (M.Sivagami Vs. R.Raja).

8. Accordingly, these Tr.CMPs are disposed of with the following directions:-

- i.HMOP.NO.42 of 2015 is directed to be withdrawn from the file of the Sub Court, Uthamapalayam and transferred to the Principal Sub Court, Periyakulam.
- ii.HMOP.NO.60 of 2015 is directed to be withdrawn from the file of the Sub Court, Dindigul and transferred to the Principal Sub Court, Periyakulam.
- iii.The Petitioner in Tr.CMP.No.349 of 2016, V.K.A.Vijayarajan shall pay an initial amount of Rs.15,000/- to his wife Rajeshwari, who is the Petitioner in Tr.CMP.No.109 of 2017, towards her initial expenses for travelling from her place of residence to Periyakulam to defend and prosecute HMOP.Nos.42 and 60 of 2015. The amount so fixed should be paid on or before the 2nd hearing date fixed by the Principal Sub Court, Periyakulam and is only a temporary arrangement and the Wife Rajeshwari is at liberty to file separate application, giving the expenses involved and the additional amounts required to prosecute and defend her case, including her travel expenses and the expenses towards summoning



of the witnesses to prosecute and defend her case and other expenses towards interim maintenance.

iv. The Principal Sub Court, Periyakulam shall hear both HMOP.Nos.42 and 60 of 2015 and pass a judgement on merits on appreciation of evidence. The Principal Sub Court, Periyakulam shall also consider any other application filed by the wife Rajeshwari, seeking interim maintenance for her livelihood or towards travel and other litigation expenses.

Sd/-
Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Uthamapalayam

2.The Subordinate Judge,
Dindigul

3.The Principal Subordinate Judge,
Periyakulam

+One cc to Mr.K.Guhan, Advocate, SR.No.60647

+One cc to Mr.Niranjan S.Kumar, Advocate, SR.No.60534

+One cc to Mr.K.Guhan, Advocate, SR.No.60648

Srcm
RL/7C/4P/KKR/SAR1/27/6/2017

Pre-Delivery Order in
Tr.CMP(MD)Nos.349 of 2016
and 109 of 2017