



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017
(Reserved on 14.09.2017)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.CMP(MD)No.535 of 2016
and
CMP(MD)No.11232 of 2016

T.Sree Bibinya ... Petitioner/Petitioner
vs.
N.Sri Ram ... Respondent/Respondent

Petition filed under Section 24 of the Civil Procedure Code, to withdraw O.P.No.3738 of 2015 from the file of the Principal Family Court at Chennai and transfer the same to the Principal Subordinate Court at Nagercoil.

For Petitioner : Mr.C.T.Perumal
For Respondent : Mr.R.Manickam

ORDER

This Transfer Civil Miscellaneous Petition has been filed to withdraw O.P.No.3738 of 2015 from the file of the Principal Family Court at Chennai and transfer the same to the Principal Subordinate Court at Nagercoil.

2.Learned counsel for the petitioner would among other things aver that the marriage between the petitioner and the respondent was solemnised on 22.05.2015 at Jesenth Mahal Selma Community Hall, Punnai Nagar, Nagercoil as per the Hindu rites and customs. Out of the wedlock, there is a girl child born to the petitioner and the respondent namely, Quity aged 9 months old. Although the petitioner tolerated humility and hostility, she was thrown out from the matrimonial home on 26.06.2015. Thereafter, the respondent filed O.P.No.3788/2015 under Section 12(1)(c) of the Hindu Marriage Act, 1955 before the Principal Family Court at Chennai, to declare the marriage held on 22.05.2015 between the petitioner and the respondent as null and void.

3.Learned counsel for the petitioner would further submit the petitioner is residing at Nagercoil with her aged parents along with her 9 months old girl child and it is difficult for her to travel from Nagercoil to Chennai which is having a distance of 700 kms. Therefore, he prays for transfer of the divorce petition filed by the respondent to the Principal Sub Court at Nagercoil.



4. The respondent filed counter affidavit. Based on the averments made therein, learned counsel for the respondent would submit that the respondent filed divorce petition mainly on the ground that suppressing the treatment undergone by the petitioner for the disease namely, somatoform disorder, marriage was solemnised. It is further contended that the respondent is the only breadwinner of the family living with his ailing parents at K.K.Nagar, Chennai and he is taking care of his ailing parents. Therefore, if the divorce petition is transferred, the respondent would be put into great prejudice.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. It is to be noted that scope of Section 24 of the Civil Procedure Code is very limited and factual disputes which are to be proved by letting in evidence cannot be gone into by this Court. Further, it is a settled legal proposition that in transfer petitions regarding matrimonial disputes, convenience of the wife has to be given preference. In this regard, reference can be made to the following decisions:-

(i) In **Arti Rani @ Pinki Devi and another Vs. Dharmendra Comber Gupta**, reported in **2008 (9) SCC 353**, it has been held that the convenience of the wife must be given preference in the matter of transfer petition.

(ii) In yet another case in **TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006**, the Principal Seat of this Court has considered the following judgments of the Hon'ble Supreme Court:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance



journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.''

7.Considering the facts and circumstances of the case and in the light of the legal principle that convenience of the wife has to be given preference, this Transfer Civil Miscellaneous Petition is allowed and O.P.No.3738 of 2015 on the file of the Principal Family Court at Chennai, is ordered to be transferred to the file of the Principal Subordinate Court at Nagercoil within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A.E)

/True Copy/

Sub Assistant Registrar

To

1)The Judge,
Principal Family Court,
Chennai.

2)The Judge,
Principal Subordinate Court,
Nagercoil.

+1cc to Mr.C.T.PERUMAL Advocate in SR. No. 90734

BALA

JS/SV.MMS/SAR.4/14.12.2017/3P-4C

order made in
TR.CMP (MD) No.535 of 2016
04.12.2017