

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.1050 of 2017
and C.M.P.No.21446 of 2017

R.Sudha Pricilla ... Petitioner
Vs.

S.Stephen ... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw the proceedings in FCIDOP No.90 of 2017 now pending on the file of the Family Court at Chengalpattu and transfer the same to the file of the Family Court at Trichy.

For Petitioner : M/s.Elizabeth Ravi

For Respondent : No appearance

O R D E R

This petition is filed to withdraw the proceedings in FCIDOP No.90 of 2017 now pending on the file of the Family Court at Chengalpattu and transfer the same to the file of the Family Court at Trichy.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 30.08.2007 at Our Lady of Fathima Shrine, Tambaram, Chennai, as per Christian rites and customs. In the wedlock, two children were born namely Renella and Derrik Wesley. The respondent tortured and ill treated the petitioner and hence, she left the matrimonial home alongwith the children. The petitioner filed M.C.No.119 of 2017 under Section 125 Cr.P.C. against the respondent claiming maintenance, on the file of Family Court, Trichy and the same is pending. While so, the respondent filed F.C.I.D.O.P.No.90 of 2017 on the file of the Family Court, Chengalpet, for divorce, in order to harass the petitioner.

3. According to the petitioner, she is residing at Trichy and hence, it is difficult for her to travel from Trichy to Chennai for each and every hearing. Further she is earning only a meagre amount and she is unable to meet out the travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. for transfer of F.C.I.D.O.P.No.90 of 2017 from the file of the Family Court, Chengalpet to the file of the Family Court, Trichy to be tried alongwith M.C.No. 119 of 2017, pending on its file.

4. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

5. It is well settled law that whenever the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]. Further as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

6. Having regard to the submissions made by the learned counsel for the petitioner and the decisions of the Hon'ble Apex Court referred to above and the residence of the petitioner is in Chennai, the petition in F.C.I.D.O.P.No.90 of 2017 is ordered to be withdrawn from the file of the Family Court, Chengalpet and transferred to the file of the Family Court, Trichy, to be tried along with M.C.No.119 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Family Court Judge, Chengalpet, is directed to transmit all the records pertaining to F.C.I.D.O.P.No.90 of 2017 to the file of the Family Court, Trichy, within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge, the Family Court,
Chengalpet
2. The Judge, The Family Court,
Trichy

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and C.M.P.No.21446 of 2017