

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.1081 of 2017
and C.M.P.Nos.22285 and 22286 of 2017

K.Chitra

... Petitioner

Vs.

S.Ilayaraja

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.77 of 2017 pending on the file of the Subordinate Court, Harur, Dharmapuri District and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.R.Y.George Williams
For Respondent : Mr.M.Dhamodharan

O R D E R

This petition is filed to withdraw H.M.O.P.No.77 of 2017 pending on the file of the Subordinate Court, Harur, Dharmapuri District and transfer the same to the file of the Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 17.06.2005 as per Hindu rites and customs. In the wedlock, two children were born. Due to the cruelty committed by the respondent, the petitioner left the matrimonial home and filed a petition against the respondent under Domestic Violence Act in D.V.C.No.182 of 2017 and the same is pending on the file of the Mahila Court, Allikulam, Egmore, Chennai. The said case was taken on file in S.C.No.249 of 2014 and the respondent was convicted for the offence under Sections 498A and 323 I.P.C. Challenging the same, the respondent filed Crl.A.No.307 of 2016 before this Court. The petitioner also filed Crl.A.No.478 of 2017 for enhancement of punishment and acquittal of respondent under Section 307 I.P.C. and the same are pending. In order to harass and revenge the petitioner, the respondent filed H.M.O.P.No.77 of 2017 under Section 13(1)(ia) of the Hindu Marriage Act, before the Subordinate Court, Harur, Dharmapuri District for divorce, against the petitioner making false allegations.

3.According to the petitioner, she is residing at Selavoyal in Chennai along with her children and aged parents. Her daughter is studying in VIth standard and son is studying in L.K.G. in Donbosco School, Chennai. The distance between

Chennai and Harur is more than 350 kilometers and hence, it is very difficult for her to travel such a long distance to attend the Court proceedings at Harur. The respondent is working in a Transport Department and it will not be difficult for him to travel from Harur to Chennai. The respondent has also appeared before this Court in Criminal Appeal filed by him as well as in the Criminal Appeal filed by her. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.77 of 2017 pending on the file of the Subordinate Court, Harur, Dharmapuri District, to the file of the Family Court, Chennai.

4.The learned counsel for the respondent submitted that there will be life threat in Chennai, if the respondent files a case before the Court at Chennai and therefore, he has filed H.M.O.P. before the Subordinate Court, Harur and prayed for dismissal of the transfer petition.

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

6.I have considered the above contentions of the learned counsel for the petitioner and respondent. It is well settled by judicial pronouncement of 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], the convenience of the wife must be given preference in the matrimonial proceedings. Further, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

7.The petitioner is residing at Chennai along with her two minor children and the distance between Chennai and Harur is 350 kilometers. In view of the judgment of the Hon'ble Supreme Court referred to above and provisions of Hindu Marriage Act, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.77 of 2017 is ordered to be withdrawn from the file of the Subordinate Court, Harur, Dharmapuri District and transferred to the file of the Family Court, Chennai. The learned Subordinate Judge, Harur, Dharmapuri District, is directed to transmit all the records pertaining to H.M.O.P.No.77 of 2017 to the file of the Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Harur, Dharmapuri District.

2.The Judge, Family Court, Chennai.

+1cc to Mr.R.Y.George William, Advocate Sr.No.29414

RJ(CO)
sm:29.5.2018

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