

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.439 of 2017
and C.M.P.No.8990 of 2017

P.A.Ajithkumar

... Petitioner/Respondent

Vs.

1.J.P.Ganga

2.Minor J.G.Kannan

... Respondents/Petitioner

(Represented by mother and
natural guardian J.P.Ganga)

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw M.C.No.168 of 2016 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Principal Family Court, Coimbatore.

For Petitioner : Mr.S.B.Viswanathan

For R1 : No appearance

R2 : Minor represented by R1

O R D E R

This petition is filed to withdraw M.C.No.168 of 2016 pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Principal Family Court, Coimbatore.

2.The petitioner is husband, first respondent is wife and second respondent is their minor son. The petitioner has come out with the present Tr.C.M.P. to withdraw the maintenance case in M.C.No.168 of 2016 filed by the first respondent, which is pending on the file of the Additional Family Court, Coimbatore and transfer the same to the file of the Principal Family Court, Coimbatore. The petitioner is seeking transfer on the ground that while main M.C.No.168 of 2016 is pending, the respondents have filed an application claiming interim maintenance.

3. According to the petitioner, the learned Judge is ordering the petitioner to pay the interim maintenance to the respondents at the stage of completion of trial in main M.C.No.168 of 2016, without permitting the petitioner to file counter in the application for interim maintenance and without considering the fact that already both the petitioner and first respondent dissolved their marriage in the Deed of Customary Divorce and the first respondent has relinquished her right from claiming maintenance from the petitioner. In view of such attitude of the learned Judge, the petitioner is seeking transfer of M.C.No.168 of 2016 from the file of the Additional Family Court, Coimbatore, to the file of the Principal Family Court, Coimbatore, alleging that he will not get justice from the present Presiding Officer.

4. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the first respondent and her name has been printed in the cause list, there is no representation on behalf of her either in person or through counsel. Second respondent, who is the minor, is represented by her mother/first respondent.

5. The contention of the learned counsel for the petitioner that the learned Judge is ordering the petitioner to pay the interim maintenance at the stage of completion of trial in the main M.C.No.168 of 2016 and is not permitting the petitioner to file counter in the application for interim maintenance, is not acceptable. No Court can really direct a party to pay the maintenance without an order being passed.

6. For the above reason, the present Transfer Civil Miscellaneous Petition is dismissed as devoid of merits. The grievance of the petitioner is that while main M.C.No.168 of 2016 is in part heard stage, the respondents have filed application for interim maintenance and the same was taken up for hearing. In view of the same, the learned Additional Family Judge, Coimbatore, is directed to hear the main M.C.No.168 of 2016 itself and pass orders on merits and in accordance with law, after hearing both the parties. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

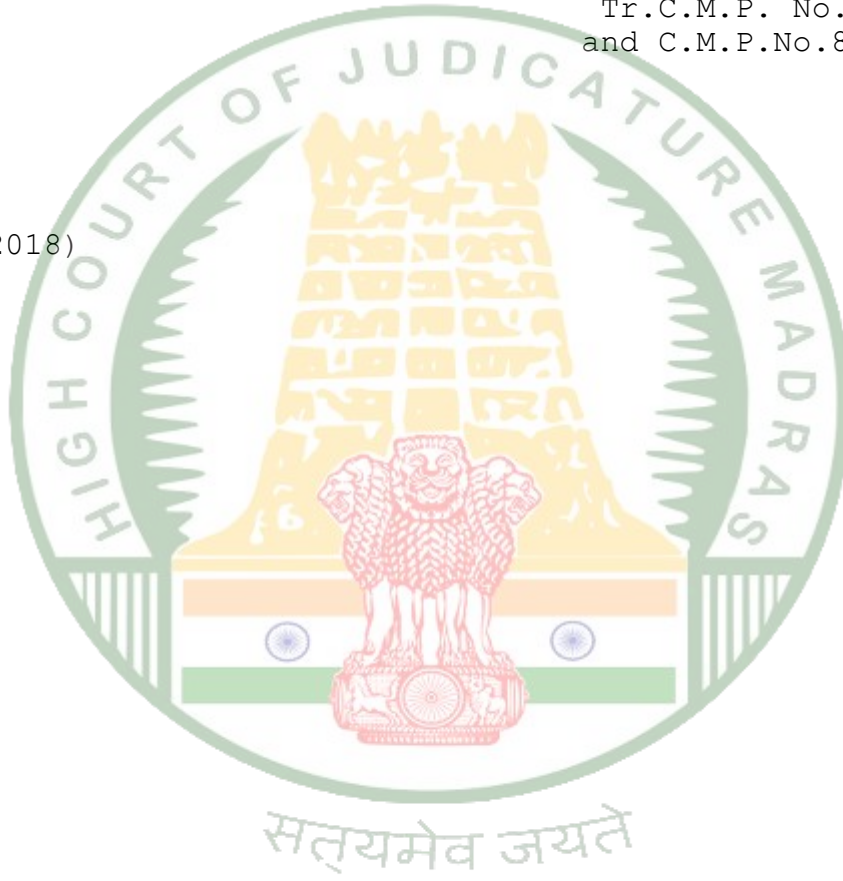
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To
The Additional Family Judge, Coimbatore.

+1 CC to Mr.S.B. Viswanathan, Advocate sr 24186.

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SP(19/04/2018)



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