

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.453 of 2017
and C.M.P.No.9261 of 2017

N.Saroja

.. Petitioner

-Vs-

N.Ashok Kumar

.. Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C praying to withdraw and to transfer the H.M.O.P.No.195 of 2016 pending on the file of the Sub Court, Thoothukudi to Family Court, Madras.

For petitioner .. Mr.N.Ramamani
For Respondent .. Served-No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition is filed seeking to withdraw H.M.O.P.No.195 of 2016 filed by the husband pending on the file of the Subordinate Court, Thoothukudi and to transfer the same to the file of the Family Court, Chennai.

2. H.M.O.P.No. 195 of 2016 is filed by the respondent-husband under Section 13(1) (i-a) of the Hindu Marriage Act on the file of the Subordinate Court, Thoothukudi for dissolution of marriage held between the petitioner and respondent on 01.06.2012.

3. It is stated that earlier the petitioner-wife has filed a maintenance case in M.C.No.332 of 2016 before the Principal Judge, Family Court, Chennai and also filed H.M.O.P.No.3033 of 2016 under Section 9 of the Hindu Marriage Act before the same Court for restitution of conjugal rights.

4. In paragraph 7 of the affidavit filed in support of the petition, it is stated that the petitioner is living in Chennai along with her son without sufficient income to eke out their livelihood.

Hence, she is not in a position to incur expenditure for travelling to attend the hearings at Thoothukudi in H.M.O.P.No.195 of 2016. Further, it would be very difficult for her to travel with the child to attend each and every hearing of the case at Thoothukudi.

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

6. It is stated by the learned counsel for the petitioner that H.M.O.P.No.3033 of 2016 was allowed ex-parte on 14.12.2017. No steps were taken by the respondent-husband to set aside the same. It is further submitted that when the copy of the order passed was produced before the Sub Court, Thoothukudi, even then the matter was being proceeded with. It is also stated that if the said H.M.O.P.No.195 of 2016 is allowed to be proceeded with and any order is passed there, it would nullify the order already granted in H.M.O.P.No.3033 of 2017 filed by the petitioner-wife. Hence, she seeks transfer.

7. It is seen from the long cause title that the respondent is employed in Chennai. Therefore, it would not be prejudicial for him, if the said H.M.O.P.No.195 of 2016 is transferred to Chennai.

8. Taking into consideration the convenience of the parties and that Section 19 (iii-a) of the Hindu Marriage Act gives preference for the wife to file a petition before the jurisdictional Court where she resides either independently or along with her parents, brother, sister or relatives as the case may be, this Court deems it fit to transfer the said H.M.O.P.No.195 of 2016 pending on the file of the Subordinate Court, Thoothukudi.

9. Accordingly, Tr.C.M.P is allowed and H.M.O.P.No.195 of 2016 pending on the file of the Subordinate Court, Thoothukudi is withdrawn and transferred to the file of the Family Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

srn

To

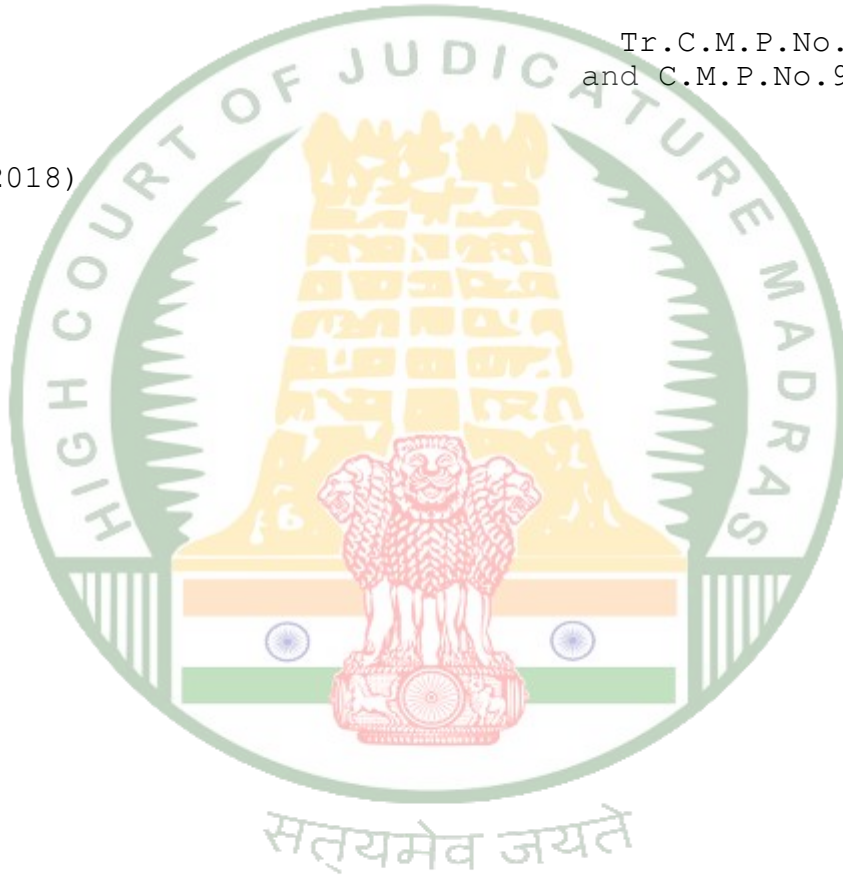
1. The Subordinate Judge, Thoothukudi

2. The Judge, Family Court, Chennai

+1 CC to Mr.D. Parvathy, Advocate sr 13626.

NMI (CO)
SP(08/03/2018)

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