

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P. No.950 of 2017
and C.M.P.No.19038 of 2017

Priyanga

... Petitioner

versus

M.Muthukumar

... Respondent

Prayer:- The Petition is filed under Section 24 of C.P.C. praying to withdraw the case in F.C.O.P.No.342 of 2017 on the file of the Family Court, Erode and transfer to the Subordinate Court, Harur, Dharmapuri District.

For Petitioner : Mr.R.Arundatton
For M/s.C.Munusamy
For Respondent : Mr.M.Guruprasad

O R D E R

The petitioner/wife in the matrimonial dispute has filed this Transfer Civil Miscellaneous Petition seeking transfer of F.C.O.P.No.342 of 2017, pending on the file of Family Court, Erode to the file of Subordinate Court, Harur, Dharmapuri.

2. The respondent/husband has filed F.C.O.P.No.342 of 2017 under Section 9 of the Hindu Marriage Act, before the District Family Court, Erode for restitution of conjugal rights. Whereas, the petitioner/wife has filed H.M.O.P.No.94 of 2017 under Section 13(1)(ia) of the Hindu Marriage Act, before the Subordinate Court, Harur, for divorce.

3. In paragraph 4 of the affidavit, the petitioner/wife has expressed difficulty in going to Erode from Harur for each hearing, since the Court at Erode is a Family Court, where the appearance of the parties is mandatory.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The transfer is opposed by the learned counsel appearing for the respondent/husband. It is stated that the respondent is presently employed in Kerala and there is no connectivity to Harur to attend the hearings in the event of transfer of the O.P.

6. Considering the convenience of the parties and also Section 19(iii-a) of the Hindu Marriage Act, which gives preference for the wife in respect of the place where she resides, and in order to avoid contradictory decisions, this Court is of the view that the matter may be transferred to suit the convenience of the wife, who is living in Harur, where the H.M.O.P.No.94 of 2017 is already pending. Considering the difficulty expressed by the respondent/husband, who is presently employed in Kerala, his appearance is dispensed with before the Subordinate Court, Harur, till the commencement of the trial. It is sufficient if the respondent/husband appears only at the time of trial.

7. With the above liberty, the Transfer Civil Miscellaneous petition is allowed by withdrawing F.C.O.P.No.342 of 2017, pending on the file of Family Court, Erode and transferring the same to the file of the Subordinate Court, Harur, Dharmapuri, to be tried along with H.M.O.P.No.94 of 2017. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rsi

To

1. The Family Judge,
Erode.

2. The Subordinate Judge,
Harur, Dharmapuri.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.11682

+1cc to M/s.C.Munusamy, Advocate, S.R.No.11863

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CS/07/03/18