

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.128 and 198 of 2018
and C.M.P.Nos.3579 and 5169 of 2018

Tr.C.M.P.No.128 of 2018

A.D.Arulvizhi

... Petitioner

Vs.

R.Sathish Kumar

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.1673 of 2017 pending on the file of the Principal Family Court, Chennai and transfer the same to the file of the Family Court, Chengalpattu to be tried along with F.C.O.P.No.41 of 2017 pending on its file.

For Petitioner : Mr.R.Karunakaran

For Respondent : Mr.C.K.M.Appaji

Tr.C.M.P.No.198 of 2018

R.Sathish Kumar

... Petitioner

Vs.

Arulvizhi

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.41 of 2017 pending on the file of the Family Court, Chengalpattu and transfer the same to the file of the Principal Family Court, Chennai to be tried along with O.P.No.1673 of 2017 pending on its file.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.R.Karunakaran

C O M M O N O R D E R

Tr.C.M.P.No.128/2018 is filed to withdraw O.P.No.1673 of 2017 pending on the file of the Principal Family Court, Chennai

and transfer the same to the file of the Family Court, Chengalpattu to be tried along with F.C.O.P.No.41 of 2017 pending on its file.

Tr.C.M.P.No.198/2018 is filed to withdraw F.C.O.P.No.41 of 2017 pending on the file of the Family Court, Chengalpattu and transfer the same to the file of the Principal Family Court, Chennai to be tried along with O.P.No.1673 of 2017 pending on its file.

2.For the sake of convenience, the parties are referred to as husband and wife.

3.The marriage between the parties was conducted on 27.11.2014 as per Hindu Rites and Customs. In the wedlock, a male child was born on 12.11.2015. The husband tortured the wife and thrown her out from the matrimonial home. While so, the wife filed F.C.O.P.No.41 of 2017 before the Family Court, Chengalpattu for restitution of conjugal rights. The husband filed O.P.No.1673 of 2017 before the Principal Family Court, Chennai for divorce on the ground of cruelty.

4.According to the wife, she is residing at Singaperumal Koil Village, Chengalpattu. She is not having any independent income to maintain her day-to-day expenses, including the traveling expenses. It will be very difficult for her to travel from Chengalpattu to Chennai to attend each and every hearing. In the circumstances, she has filed the present Tr.C.M.P.No.128/2018 to transfer O.P.No.1673 of 2017 from the file of the Principal Family Court, Chennai to the file of Family Court, Chengalpattu, in order to avoid conflicting decision being delivered by two different Courts.

5.The learned counsel for the husband submitted that the husband is working in Chennai and it will be very difficult for him to travel from Chennai to Chengalpattu to attend each and every hearing if O.P.No.1673 of 2017 is transferred to Family Court, Chengalpattu and prayed for dismissal of the Tr.C.M.P.No.128/2018 filed by the wife and allow the Tr.C.M.P.No.198/2018 filed by the husband.

6.Heard the counsel for the wife as well as the husband and perused the materials available on record.

7.Considering the above contention of the learned counsel for the wife as well as the husband and well settled 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.

8. Accordingly, the Tr.C.M.P.No.128/2018 is ordered and Tr.C.M.P.No.198/2018 is dismissed. The petition in O.P.No.1673 of 2017 is ordered to be withdrawn from the file of the Principal Family Court, Chennai and transferred to the file of the Family Court, Chengalpattu to be tried along with F.C.O.P.No.41 of 2017 filed by the wife, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Principal Judge, Family Court, Chennai is directed to transmit all the records pertaining to O.P.No.1673 of 2017 to the file of the Family Court, Chengalpattu within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Judge, Family Court, Chennai.

2.The Judge, Family Court, Chengalpattu.

Tr.C.M.P.Nos.128 and 198 of 2018
and C.M.P.Nos.3579 and 5169 of 2018

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