

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.131 of 2018
and C.M.P.No.3599 of 2018

S.Shanthi ... Petitioner

Vs.

S.Vijai ... Respondent

PRAYER: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.62 of 2017 pending on the file of the Sub Court, Madhuranthagam and transfer the same to the file of the Family Court, Erode or Sub Court, Erode.

For Petitioner : Mr.R.Prabakar

For Respondent : Ms.S.Deivasigamani

O R D E R

This petition is filed to withdraw H.M.O.P.No.62 of 2017 pending on the file of the Sub Court, Madhuranthagam and transfer the same to the file of the Family Court, Erode or Sub Court, Erode.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 16.02.2011 as per Hindu Rites and Customs. In the wedlock, a male child was born on 04.10.2013. Due to difference of opinion, the petitioner and the respondent are living separately. The respondent filed H.M.O.P.No.62 of 2017 on the file of the Sub Court, Madhuranthagam.

3.According to the petitioner, she is residing in Vengampur Village, Erode District along with her mother and minor child. She is not having any independent income and depending on her aged mother. Her mother is supporting the petitioner by doing coolie work. The distance between her village and Madhuranthagam in Erode is around 300 kms. She has no sufficient means to travel from her village to Madhuranthagam along with minor child to attend each and every hearing. In the circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition to transfer H.M.O.P.No.62 of 2017 pending on the file of the Sub Court, Madhuranthagam to the file of the Family Court, Erode or Sub Court at Erode. The petitioner also made various

allegations against the respondent in the affidavit filed in support of the above Transfer Civil Miscellaneous Petition.

4.The learned counsel for the respondent denied all the allegations made against the respondent. The learned counsel for the respondent contend that H.M.O.P.No.62 of 2017 is pending only on the file of the Sub Court at Madhuranthagam. The petitioner can appear through an Advocate and she need not appear in person for each and every hearing. It is suffice if she appears before the Court at the time of trial or as and when so directed by the Court and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

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

6.Considering the above contention of the learned counsel for the petitioner and the difficulties expressed by the petitioner to attend the proceedings before the Court at Madhurandhagam 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.

7.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.62 of 2017 is ordered to be withdrawn from the file of the Sub Court, Madhurandhagam and transferred to the file of the Sub Court, Erode. The learned Subordinate Judge, Madhurandhagam is directed to transmit all the records pertaining to H.M.O.P.No.62 of 2017 to the file of the Sub Court, Erode 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.

LPP/g

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Madhurandhagam.
- 2.The Subordinate Judge, Erode.

+1cc to Mr.R.Prabakar, Advocate Sr.No.39716

VBA(CO)

sm:16.7.2018