IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.184 of 2018
and C.M.P.No.4894 of 2018

V.Rekha .. Petitioner

Vs.

M.Gopinath .. Respondent

PRAYER: This petition has been filed under Section 24 C.P.C to withdraw F.C.O.P.No.149 of 2017 pending on the file of the Family Court, Chengalpet and transfer the same to the file of the Sub Court, Kanchipuram, Kanchipuram District to be tried along with O.P.No.258 of 2017 pending on its file.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.V.S.Rajaram

O R D E R

This Petition has been filed to withdraw F.C.O.P.No.149 of 2017 pending on the file of the Family Court, Chengalpet and transfer the same to the file of the Sub Court, Kanchipuram, Kanchipuram District to be tried along with O.P.No.258 of 2017 pending on its file.

2.The petitioner is the wife and respondent is the husband. The marriage between petitioner and respondent was conducted on 01.12.2016 as per Hindu Rites and Customs. Due to difference of opinion, both the petitioner and respondent are living separately. While so, the respondent, through his father, the Power of Attorney, filed F.C.O.P.No.149 of 2017 before the Family Court at Chengalpet for divorce against the petitioner. The petitioner filed O.P.No.258 of 2017 before the Sub Court at Kanchipuram, Kanchipuram District for restitution of conjugal rights.

3.According to the petitioner, she is residing at Kanchipuram along with her parents. The distance between Chengalpet and Kanchipuram is more than 75 kms to and fro and hence, it will be very difficult for her to attend each and every hearing before the Family Court at Chengalpet. In the

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circumstances, she has filed the present Transfer Civil Miscellaneous Petition to transfer F.C.O.P.No.149 of 2017 from the file of the Family Court at Chengalpet to the Sub Court at Kanchipuram, to be tried along with O.P.No.258 of 2017 pending on its file, in order to avoid conflicting decisions being rendered by two different Courts.

4.The learned counsel for the respondent submitted that the respondent is appearing through his father, the power of attorney and he is a senior citizen. Hence, it will be very difficult for him to travel from Chengalpet to Kanchipuram and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

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

6.Considering the above contention of the learned counsel for the petitioner and respondent, if the matter is transferred to Kanchipuram, both the parties can represent the matter through an Advocate and appearance of the parties is not necessary for each and every hearing before Sub Court, Kancheepuram. Both of them can appear at the time of trial or as and when so directed by the learned Judge. Also considering the 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 F.C.O.P.No.149 of 2017 is ordered to be withdrawn from the file of the Family Court, Chengalpet and transferred to the file of the Sub Court, Kanchipuram to be tried along with O.P.No.258 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Judge, Family Court, Chengalpet is directed to transmit all the records pertaining to F.C.O.P.No.149 of 2017 to the file of the Sub Court, Kanchipuram 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/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The Judge, Family Court, Chengalpet.

2.The Subordinate Judge, Kanchipuram.

+1cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No.43812
+1cc to Mr.V.S.Rajaram, Advocate, S.R.No.4471

Tr.C.M.P.No.184 of 2018
and C.M.P.No.4894 of 2018

VBA(CO)
GSP(30/07/2018)

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