

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.251 of 2018

and C.M.P.No.6495 of 2018

S.Nithiya @ Nithiyakalyani

... Petitioner

Vs.

C.Ganapathy Subramaniam

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.198 of 2017 pending on the file of the Subordinate Court, Pollachi and transfer the same to the file of the Family Court, Trichy.

For Petitioner : Mr.R.Ganesh Babu

For Respondent : No appearance

O R D E R

This petition is filed to withdraw H.M.O.P.No.198 of 2017 pending on the file of the Subordinate Court, Pollachi and transfer the same to the file of the Family Court, Trichy.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 12.02.2016 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living in the matrimonial home in Coimbatore. Due to difference of opinion, both the petitioner and respondent are living separately. The petitioner filed M.C.No.95 of 2016 on the file of the Family Court, Trichy, against the respondent claiming maintenance and the same was ordered. As the respondent did not comply with the said order, the petitioner has filed M.P.No.96 of 2018 in M.C.No.95 of 2016 on the file of the Family Court, Trichy, for a direction to the respondent to pay the arrears of maintenance amount to the petitioner. The respondent filed H.M.O.P.No.198 of 2017 on the file of the Subordinate Court, Pollachi, for divorce against the petitioner making false allegations.

3.According to the petitioner, she is residing at Trichy along with her aged parents. The distance between Trichy and Pollachi is more than 200 kilometers and being a lady, it is very difficult for her to travel such a long distance to attend the Court proceedings at Pollachi. Further, the petitioner is not having any independent income and she is depending on her parents for her day-to-day expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.198 of 2017 pending on the file of the Subordinate Court, Pollachi, to the file of the Family Court, Trichy, to try along with M.P.No.96 of 2018 in

M.C.No.95 of 2016 pending on its file.

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

5.Considering the above contention of the learned counsel for the petitioner 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.

6.Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.198 of 2017 is ordered to be withdrawn from the file of the Subordinate Court, Pollachi and transferred to the file of the Family Court, Trichy, to be tried along with M.P.No.96 of 2018 in M.C.No.95 of 2016 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts. The learned Subordinate Judge, Pollachi, is directed to transmit all the records pertaining to H.M.O.P.No.198 of 2017 to the file of the Family Court, Trichy, 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 III)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Pollachi.

2.The Judge, Family Court, Trichy.

+1cc to Mr.R.Ganesh Babu, Advocate Sr.No.29027

NA(CO)

sm:14.5.2018

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