

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.280 of 2018
and C.M.P.No.6980 of 2018

S.Pavithra

... Petitioner

Vs.

S.Prabhu

.... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.14 of 2018 pending on the file of the Principal Family Court, Erode and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Ms.C.Sangamithirai

For Respondent : Mr.C.E.Pratap

O R D E R

This petition is filed to withdraw F.C.O.P.No.14 of 2018 pending on the file of the Principal Family Court, Erode and transfer the same to the file of the Family Court, Chennai.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 16.06.2017 as per Hindu rites and customs. Due to difference of opinion between the petitioner and respondent, both the petitioner and respondent are living separately. The petitioner made various allegations on merits in the Transfer Petition against the respondent and stated that consent for marriage was obtained by the respondent by threat and coercion. The petitioner filed O.P.No.4569 of 2017 under Section 12(1)(c) of the Hindu Marriage Act, for declaration of marriage between the petitioner and respondent as null and void and the same is pending on the file of IV Additional Family Court, Chennai. On receiving summons, the respondent filed F.C.O.P.No.14 of 2018 on the file of the Principal Family Court, Erode, for restitution of conjugal rights, against the petitioner.

3. According to the petitioner, she is residing at Chennai. The distance between Chennai and Erode is more than 400 kilometers and being a lady, it will be very difficult for her to travel such a long distance to attend the Court proceedings at Erode for each and every hearing. She further stated that there is a life threat to the petitioner and with great difficulty, she left the matrimonial home. She filed Crl.O.P.No.28911 of 2017 before this Court and obtained direction for protection for her life. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer F.C.O.P.No.14 of 2018 pending on the file of the Principal Family Court, Erode, to the file of the Family Court, Chennai.

4. The learned counsel for the respondent filed counter and typed set of papers and contended that the petitioner is not a permanent resident of Chennai and only for the purpose of filing Transfer Petition, she has created document and filed the present Transfer Petition. On the complaint given by the petitioner, the respondent filed Crl.M.P.No.382 of 2018 before the Principal District and Sessions Court, Erode and obtained anticipatory bail. The respondent is working as Assistant Professor in Kumaraguru College of Technology at Coimbatore and hence, it will be very difficult for him to go to Chennai to attend the Court proceedings for each and every hearing and prayed for dismissal of the transfer petition.

5. The learned counsel for the petitioner has filed additional typed set of papers enclosing offer letter dated 25.09.2017 given by Uk Logistics India Private Limited, Chennai, order passed by this Court dated 18.12.2017 made in Crl.O.P.No.28077 of 2017, rental agreement dated 04.04.2018 and receipt for payment of gas cylinder, to prove that the petitioner is residing only at Chennai.

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

7. Considering the above contention of the learned counsel for the petitioner as well as the respondent 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 Transfer Civil Miscellaneous Petition is ordered. The petition in F.C.O.P.No.14 of 2018 is ordered to be withdrawn from the file of the Principal Family Court, Erode and

transferred to the file of IV Additional Family Court, Chennai, to be tried along with O.P.No.4569 of 2017 filed by the petitioner, in order to avoid multiplicity of proceedings and conflicting decisions being delivered by two different Courts. The learned Principal Family Judge, Erode, is directed to transmit all the records pertaining to F.C.O.P.No.14 of 2018 to the file of IV Additional Family Court, Chennai, 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 IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Family Judge, Erode.

2.The Judge, IV Additional Family Court, Chennai.

+1cc to Mr.C.E.Pratap, Advocate sr.no.46880

+1cc to Ms.C.Sangamithirai, Advocate sr.no.46813

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