

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.453 of 2018

and C.M.P.No.11587 of 2018

Shanthi

... Petitioner

Vs.

Sendhamizhselvan

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw M.O.P.No.52 of 2018 pending on the file of Family Court, Puducherry and transfer the same to the file of Family Court, Virudhunagar.

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondent : Mr.N.Ishtiaq Ahmed

O R D E R

This petition is filed to withdraw M.O.P.No.52 of 2018 pending on the file of Family Court, Puducherry and transfer the same to the file of Family Court, Virudhunagar.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 06.11.2016 as per Hindu rites and customs. Due to difference of opinion, both the petitioner and the respondent are living separately. While so, the respondent filed M.O.P.No.52 of 2018 on the file of Family Court, Puducherry for divorce against the petitioner.

3.According to the petitioner, she is residing along with her aged parents at Virudhunagar. The petitioner's brothers are working in Chennai. The distance between Virudhunagar and Puducherry is more than 390 kilometers and being a lady, it will be very difficult for her to attend the Court proceedings for each and every hearing at Family Court, Puducherry. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer M.O.P.No.52 of 2018 pending on the file of Family Court, Puducherry to the file of Family Court, Virudhunagar.

4. The learned counsel for the petitioner submitted that the petitioner filed H.M.O.P.No.73 of 2018 pending on the file of Sub Court, Virudhunagar, for restitution of conjugal rights and if M.O.P.No.52 of 2018 is transferred to Sub Court, Virudhunagar, the appearance of the parties are not necessary for all the hearings, the respondent can appear through advocate and prayed for transfer of M.O.P.No.52 of 2018 to the

file of Sub Court, Virudhunagar, to be tried along with H.M.O.P.No.73 of 2018 filed by the petitioner.

5.The learned counsel for the respondent filed counter affidavit and denied all the allegations made against the respondent. The learned counsel for the respondent contended that the petitioner has filed H.M.O.P.No.73 of 2018 on the file of Sub Court, Virudhunagar for restitution of conjugal rights and also filed M.C.No.8 of 2017 on the file of Judicial Magistrate-II, Virudhunagar, claiming maintenance against the respondent and the same are pending. The father of the petitioner is retired Sub-Inspector of Police and her two brothers are working as Head Constables in Chennai. They are well influenced persons in the judiciary and hence prayed for transfer of H.M.O.P.No.73 of 2018, M.C.No.8 of 2017 and M.O.P.No.52 of 2018 filed by the respondent, to the file of Family Court, Chennai. He also submitted that there is life threat to the respondent by the family members of the petitioner and his life will be in danger in their hands and prayed for dismissal of the Transfer Petition. He has relied on the following Judgments in support of his contentions:

- 1) *Krishna Veni Nagam Vs. Harish Nagam* reported in 2017 4 SCC 150.
- 2) *Preeti Sharma Vs. Manjit Sharma* reported in 2005 11 SCC 535.
- 3) *Anindita Das Vs. Srijit Das* reported in 2006 9 SCC 197

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

7. The main contention of the learned counsel for the respondent is that the father of the petitioner is retired Sub Inspector of Police and her brothers are working as Head Constables in Chennai and they are influenced persons in the judiciary and there is life threat to respondent in the hands of petitioner's father and brothers. The respondent has not produced any acceptable evidence to substantiate his contentions. These allegations are made on misconception without any basis.

8.Considering the above contentions 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. If the HMOP filed by petitioner and HMOP filed by respondent are tried by two different Courts there is possibility on conflicting decrees may be passed.

9. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in M.O.P.No.52 of 2018 is ordered to be withdrawn from the file of Family Court, Puducherry and transferred to the file of Sub Court, Virudhunagar, to be tried along with H.M.O.P.No.73 of 2018 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, Puducherry is directed to transmit all the records pertaining to H.M.O.P.No.52 of 2018 to the file of Sub Court, Virudhunagar, 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 VII)

//True copy//

Sub Assistant Registrar

LPP/arr

To

- 1.The Judge, Family Court, Puducherry.
- 2.The Subordinate Judge, Virudhunagar.

+1cc to Mr.N.Ishtiaq Ahmed, Advocate SR.NO.49809

sm:27.8.2018

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