IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.68 of 2018
and C.M.P.No.1892 of 2018

M.Madhumitha ... Petitioner

Vs.

A.Nishanth ... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw O.P.No.4278 of 2017 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Family Court, Vellore.

For Petitioner : Mr.V.Balaji
for Mr.P.Krishnan

For Respondent : No appearance

O R D E R

This petition is filed to withdraw O.P.No.4278 of 2017 pending on the file of the III Additional Family Court, Chennai and transfer the same to the file of the Family Court, Vellore.

2.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 29.06.2012 as per Hindu rites and customs. After marriage, both the petitioner and respondent were living together in United Kingdom. In the wedlock, a male child was born on 26.06.2013. Due to difference of opinion between the petitioner and respondent, the petitioner left the matrimonial home and is permanently residing with her parents in Vellore along with her minor child. The parents of the petitioner are maintaining the petitioner and her minor child. Earlier, the respondent filed F.C.O.P.No.205 of 2015 for restitution of conjugal rights on the file of the Family Court, Vellore. The said petition was dismissed as not pressed by the respondent on 27.10.2017. The petitioner filed M.C.No.75 of 2017 before the Family Court, Vellore, directing the respondent to pay maintenance to the petitioner and minor child and the same is pending. While so,

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the respondent filed O.P.No.4278 of 2017 before the III Additional Family Court, Chennai, for dissolution of the marriage on the ground of cruelty knowing fully well that the petitioner is residing at Vellore along with her minor child.

3.According to the petitioner, she is residing with her parents at Thorappadi in Velllore, along with her minor child. The distance between Vellore and Chennai is more than 130 kilometers and hence, it is very difficult for her to travel such a long distance along with her minor child, to attend the Court proceedings in Chennai. Further, the petitioner is not having any independent income and she is depending on her parents for her day-to-day expenses including travelling expenses. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer O.P.No.4278 of 2017 from the file of the III Additional Family Court, Chennai, to the file of the Family Court, Vellore, to try along with M.C.No.75 of 2017 pending on its file.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.Notice was served on the respondent and his name is printed in the cause list. From the records, it is seen that on 26.03.2018, Mr.P.Jayaprakash and Mr.D.Parthiban, the learned counsel represented before this Court that they are appearing for the respondent. This Court directed the Registry to verify if any vakalat is filed and if so, print the names of the learned counsel Mr.P.Jayaprakash and Mr.D.Parthiban for respondent. But no vakalat is filed till date. Though names of the respondent as well as the counsel Mr.P.Jayaprakash and Mr.D.Parthiban are printed in the cause list, there is no representation on behalf of the respondent.

6.It is well settled law that whenever the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by 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]. Further as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account.

7.Having regard to the submissions made by the learned counsel for the petitioner and the decisions of the Hon'ble Apex Court referred to above and residence of the petitioner is at Vellore, the petition in O.P.No.4278 of 2017 is ordered to be withdrawn from the file of the III Additional Family Court, Chennai and transferred to the file of the Family Court, Vellore, to be tried along with M.C.No.75 of 2017 filed by the

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petitioner, in order to avoid multiplicity of proceedings and conflicting judgments being rendered by two different Courts. The learned III Additional Family Judge, Chennai, is directed to transmit all the records pertaining to O.P.No.4278 of 2017 to the file of the Family Court, Vellore, within a period of two weeks from the date of receipt of a copy of this order.

8.Accordingly, this Transfer Civil Miscellaneous petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.III Additional Family Judge, Chennai.

2.The Family Court Judge, Vellore.

+1cc to Mr.P.Krishanan, Advocate,S.R.No.27316

Tr.C.M.P. No.68 of 2018
and C.M.P.No.1892 of 2018

KGK(CO)

RRK(18/05/2018)

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