

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.600 of 2018

and

CMP.No.14466 of 2018

E. Karthika Petitioner / Respondent

Vs.

R. Prakash Respondent /Petitioner

Prayer: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.18 of 2017 pending on the file of Subordinate Court, Chidambaram, Cuddalore District and to transfer the same to Family Court, Chennai.

For Petitioner : Mr. V. Suresh Ramanujam for
Mr. J.R.K. Bhavanantham

For Respondent : No appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.18 of 2017, now pending on the file of Subordinate Court, Chidambaram, Cuddalore District and to transfer the same to Family Court, Chennai.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was solemnized on 08.09.2013 at Rani Mahal, Kattumannarkoil, Cuddalore District as per Hindu Rites and Customs. Since, the petitioner was employed in TVS, Mount Road and the respondent was employed in TCS at Velachery at the time of marriage, they have set up a matrimonial home at Chennai and

lived together. Subsequently, due to the unlawful demand made by the respondent, difference of opinion arose between the petitioner, resultantly the respondent deserted the petitioner unjustifiably on 25.07.2014. Thereafter, the petitioner joined with her parents and lived with them in Chennai.

3. In the meanwhile, the respondent filed an application under Section 13(i) (i-a) & i-b) of Hindu Marriage Act against the petitioner, in which he prayed to dissolve the marriage happened on 08.09.2013. The said case has been pending with the Subordinate Court, Chidambaram in H.M.O.P No. 18 of 2017. After filing the above said case, the petitioner lodged a complaint against the respondent before District Protection Officer, Nagapattinam. After an enquiry, she preferred a complaint against the respondent under the Provisions of Domestic Violence Act and the same has been pending with Judicial Magistrate, Sirkali. In the said circumstances, she has come forward with this present application for the relief stated in the 1st paragraph of this Order.

4. In respect to the respondent, he received a notice as early as on 11.10.2018. Subsequent to that, he has not appeared before this Court either personally or through an Advocate. Hence, on 10.12.2018, this Court directed the Registry to list the matter under the caption of "Orders". Today, even after printing the name of the respondent in the cause list, he has not appeared before this Court.

5. In the said circumstances, it is necessary to see whether the petitioner projected the sufficient cause for allowing this petition. According to the petitioner, she was residing with her parents in Chennai without any income. Hence, it is very difficult for her to attend the Court proceedings in Cuddalore.

6. Now, considering the averments made in the petition, she has raised so many allegations against the respondent in respect to her matrimonial life. Those allegations are pertaining to her matrimonial life, that has to be decided only at the time of trial before the trial Court.

7. In the said circumstances, it is relevant to look into the decision of our Honourable Apex Court, reported in Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta reported in 2008(9) SCC 353 and in Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396. In the said Judgment, it was held that the convenience of the wife must be taken into account for deciding these type of applications. In this case, on applying the said principle, it is true, being a lady, it is very difficult for her to go to Cuddalore for

attending the Court proceedings. Further, as of now, she is depending upon her parents for her day to day needs. So, this Court is of the considered view that allowing the application is the appropriate remedy for either side.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. The case in H.M.O.P.No.18 of 2017, pending on the file of Subordinate Court, Chidambaram is ordered to be withdrawn and transfer to the file of Family Court, Chennai. The learned Subordinate Judge, Chidambaram, Cuddalore District is directed to transmit the case records pertaining to H.M.O.P.No.18 of 2017, to the file of Family Court, Chennai within a period of two weeks from the date of receipt of copy of this order. On receipt of such records, the Presiding Officer, Principal Family Court, Chennai is directed to dispose the case i.e H.M.O.P.No.18 of 2017 as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Court,
Chidambaram,
Cuddalore District
2. The Family Court,
Chennai.

+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.87512

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KAK(31/01/2019)

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