

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2018

PRONOUNCED ON : 22.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No.664 of 2018

and

CMP.No.16473 of 2018

Durgadevi ... Petitioner

Vs.

Arunkumar ... Respondent

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the HMOP No.17 of 2017 from the file of the learned Principal Subordinate Court, Tiruchirappalli to the file of the Hon'ble III Additional Family Court, Chennai to try along with O.P.No.3207 of 2018.

For Petitioner : Mr.C.R.Malarvannan

For Respondent : Mr.M.Sivavarathanan

ORDER

The petitioner is the wife. The respondent is the husband.

2.All is not well qua the marital life of the petitioner and the respondent.

3.The respondent has levied HMOP No.17 of 2017 against the petitioner for divorce and the same is pending on the file of the Principal Sub-Court, Tiruchirappalli. The petitioner has levied O.P.No.3207 of 2018 against the respondent for restitution of conjugal rights and the same is pending on the file of the III Additional Family Court, Chennai.

4.Seeking transfer of the matrimonial proceeding of the respondent from Tiruchirappalli Court to Chennai Court, the petitioner has come forward with the transfer petition on the footing that she is a resident of Chennai and unable to attend the proceeding at Trichy Court as she has none to accompany her to Trichy Court and not having adequate source of income and depending upon her aged father for all her needs and accordingly, further putting forth that inasmuch as two proceedings are pending as regards the matrimonial issues between the parties in two different forums, prayed for the consolidation of the proceedings and the determination of the same by one and the same Court and accordingly, prayed for the transfer.

5.The respondent contested the transfer request of the petitioner putting forth that only to cause him hardship and inconvenience, the present transfer petition has been laid and further it is also

stated that the petitioner has preferred the transfer CMP No.278 of 2018 earlier and withdrew the said petition and in such view of the matter, the second petition for transfer is not maintainable and accordingly, prayed for the dismissal of the transfer petition.

6.The distance between the petitioner's residence and Trichy Court is found to be on the higher side. Furthermore, the petitioner has putforth certain inconvenience and hardship in attending the proceeding at Trichy Court which cannot be easily discarded. Moreover, the respondent would be required to defend the O.P. proceeding laid by the petitioner at Chennai Court.

7.Furthermore, inasmuch as two proceedings are pending between the parties as regards the matrimonial issues pertaining to them, in my considered opinion, the consolidation of the two proceedings and the determination of the same by one and the same Court would be beneficial to both the parties and by way of the same, conflict of decisions could also be avoided. Furthermore, the parties also would be required to adduce common evidence. Thus, the cause of justice would be advanced, if both the proceedings are clubbed together and determined by one and the same court.

8.No doubt, the earlier Tr.CMP preferred by the petitioner has been dismissed as withdrawn. According to the petitioner, inasmuch as she had not at that point of time preferred any OP against the respondent, she had chosen to withdraw the same and accordingly, it is stated that by way of the same, the present Tr.CMP cannot be held to be not maintainable.

9.No doubt, the earlier transfer CMP has been dismissed as withdrawn but that would not in any manner hinder the petitioner from moving another Transfer CMP, in the light of the subsequent developments, which had taken place, as it is now stated by the petitioner that she has preferred the OP for restitution of conjugal rights against the petitioner and the same is pending on the file of the Family Court, Chennai. Therefore, the dismissal of the earlier transfer CMP by itself would not disentitle the petitioner to maintain the present transfer CMP.

10.In the light of the above factors, it is found that the petitioner has projected a sufficient cause for accepting the transfer request put forth by her. Resultantly, HMOP No.17 of 2017 is withdrawn from the file of the Principal Sub-Court, Trichirappalli and transferred to the file of the III Additional Family Court, Chennai for joint trial along with O.P.No.3207 of 2018 as per law.

Accordingly, the Transfer Civil Miscellaneous petition is allowed. Consequently, connected CMP No.16473 of 2018 is closed.

22.10.2018

Index : Yes / No

Internet : Yes / No

sms

To

- 1.The Principal Subordinate Court, Tiruchirappalli.
- 2.The III Additional Family Court, Chennai.

T.RAVINDRAN, J.

sms

Pre-delivery Order made
in Transfer CMP.No.664 of 2018
and
CMP.No.16473 of 2018

22.10.2018