

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2018

PRONOUNCED ON : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No.674 of 2018

and

CMP.No.16638 of 2018

M.Kirthika ...Petitioner

Vs.

R.Mahadev ...Respondent

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw HMOP No.343 of 2015 on the file of the Family Court, Trichirapalli and transfer the same to the Family Court, Chennai.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.S.Sathyaseelan

ORDER

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

2.The respondent has levied HMOP No.343 of 2015 against the petitioner for divorce and the same is pending on the file of the Family Court, Trichirapalli.

3.Seeking transfer of the abovesaid proceeding to the Family Court, Chennai, the present transfer petition has been laid by the petitioner on the footing that she is unable to travel to Trichy Court to defend the divorce proceeding laid by the respondent as she has to look after her four year old son and also she feels insecure and apprehends danger to her life and body at the hands of the respondent, while attending the proceeding at Trichy Court and inasmuch as she has levied maintenance case and Domestic Violence Case against the respondent at Chennai Courts, accordingly, prayed for the transfer.

4.The respondent has resisted the transfer request of the petitioner on various grounds. At the foremost, it is stated that the divorce proceeding laid by him and pending on the file of the Family Court, Trichy is at part-heard stage and in such view of the matter, when the petitioner had been all along participating in the abovesaid proceeding and the matter had reached the part-heard stage, at this stage of the matter, the interest of justice would not be served, if the proceeding is transferred from the said Court to Chennai Court and therefore, sought for the rejection of the transfer request. Secondly, it is contended by the respondent's counsel that seeking similar relief, the petitioner has already laid transfer CMP (MD) No.199 of 2018 at Madurai Bench of the Madras High Court and for the reasons best known to her, had chosen to withdraw the same and consequently, the abovesaid transfer CMP has been dismissed as withdrawn and according to him, the petitioner has suppressed the abovesaid dismissal of the transfer CMP at Madurai Bench and furthermore, she has also not reserved any liberty to move a fresh transfer CMP again for the same cause and therefore, according to him, the present transfer CMP is legally not sustainable. In this connection, he also placed reliance upon the decisions reported in 2014 (4) CTC 555 (The Moderator, The Church of South India, CSI Synod Centre, Nos., Whites Road, Royapettah, Chennai - 14 Vs. Rt.Rev.Dr.J.A.D.Jebachandran, Bishop of Thoothukudi Nazareth Diocese Bishops, House No.11/32T, State Bank Colony, Thoothukudi-2.) and (1987) 1 Supreme Court Cases 5 (Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior, and others). Furthermore, it is also putforth by the respondent's counsel that the proceedings pending before the Chennai Court has nothing to do with the matrimonial issues between the parties and therefore, the transfer request putforth by the petitioner does not merit acceptance.

5.The respondent has laid the divorce case against the petitioner in the year 2015 itself, accordingly, it is seen that all along, the petitioner had been participating in the abovesaid matter and accordingly, the concerned Court had also proceeded with the enquiry of the matter and at present, the OP is at part-heard stage. In such view of the matter, the transfer of the proceeding from Trichy Court to Chennai Court as prayed for, would not be in the interest of justice and by way of the same, it is seen that only further delay would be caused in the conduct of the proceeding. Therefore, on the above ground, I am unable to accede to transfer request of the petitioner.

6.Seeking the same relief of transfer, it is noted that the petitioner has already moved a transfer CMP at Madurai Bench in Tr.CMP No.199 of 2018 but the petitioner, for the reasons best known to her, had not chosen to proceed with the same and withdrew the same, accordingly, the abovesaid

transfer CMP had been dismissed as withdrawn. At the time of the dismissal of the abovesaid transfer CMP or withdrawing the same, the petitioner has not reserved any liberty to file a fresh transfer CMP for the same relief. That apart, the petitioner has suppressed the filing of the abovesaid transfer CMP and the dismissal of the same as withdraw in the present transfer CMP. Therefore, it is seen that the petitioner has not come forward with the true facts and suppressing the filing of the earlier transfer CMP, she has come forward with the same prayer that too without reserving any right of seeking the same relief by filing a fresh application from the concerned Court. In such view of the matter, it is found that, as rightly put forth by the respondent's counsel, the transfer request of the petitioner deserves no acceptance.

7. Considering the materials placed on record, it is seen that it is only the petitioner, who had been delaying the proceeding at the said Court and remained *ex parte* at one stage of the matter and thereafter, this Court had passed the order in CRP (MD).No.2110 of 2017 in setting aside the *ex parte* order passed against the petitioner and also directed the Family Court, Trichy to dispose of HMOP No.343 of 2015 within a period of two months. In such view of the matter, when there is already a direction from this Court to dispose of the OP laid by the respondent by the Trichy Court within a particular time frame, the petitioner had suppressed the abovesaid fact also and has come forward with the transfer request of the proceeding from Trichy Court to Chennai Court. The aim of the petitioner seems to be only to delay the proceeding endlessly so as to cause undue hardship to the respondent.

8. The respondent's counsel would contend that mere convenience of the parties may not be enough for the exercise of power in seeking the transfer, unless and until, the factum is established that trial in the chosen forum, will result in denial of justice and with reference to the same, he relied upon the decision reported in (2010) 8 Supreme Court Cases 401 (Dav Boys Senior Secondary School and others Vs. Dav College Managing Committee). Therefore, it is found that the contention of the petitioner that her convenience should be taken into consideration for accepting the transfer request projected by her cannot be the sole factor for allowing the transfer and in particular when the OP proceeding laid by the respondent is already at part heard stage and nearing completion and already there is a direction of this Court to the concerned Court to dispose of the same within the specific time frame, in such circumstances, the transfer request of the petitioner cannot be given credence to.

In the light of the abovesaid factors, I do not find any sufficient cause to order the transfer petition laid by the petitioner. Resultantly, the transfer Civil Miscellaneous petition is dismissed. Consequently, connected CMP.No.16638 of 2018 is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

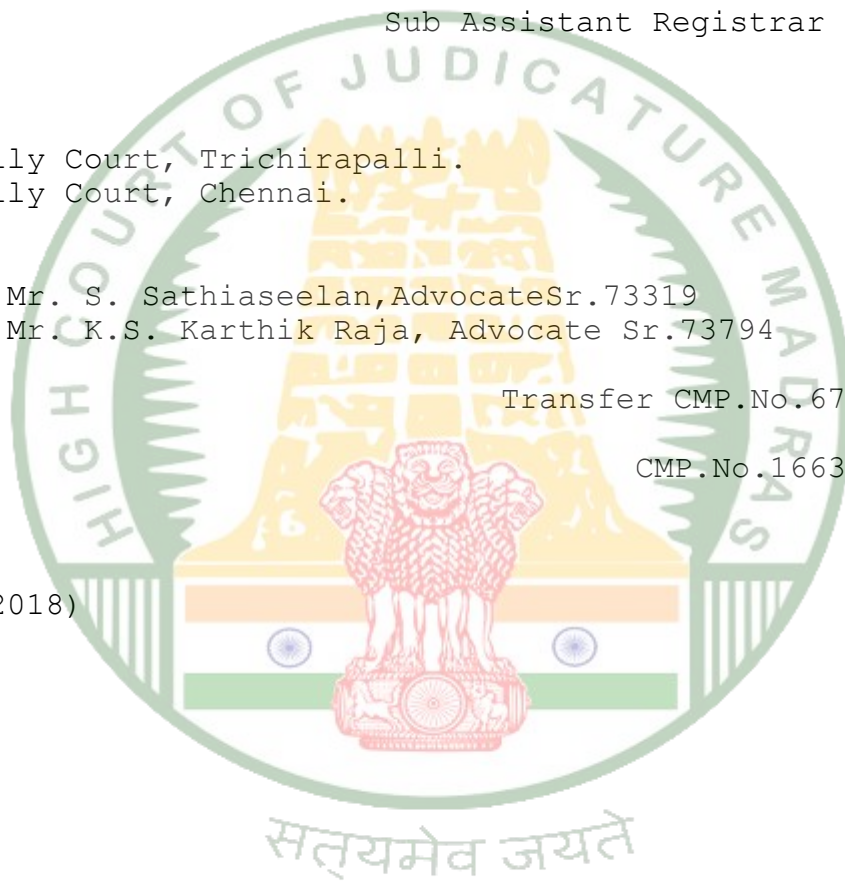
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To

- 1.The Family Court, Trichirapalli.
- 2.The Family Court, Chennai.

- + 1 cc to Mr. S. Sathiaselvan, Advocate Sr.73319
- + 1 cc to Mr. K.S. Karthik Raja, Advocate Sr.73794

Transfer CMP.No.674 of 2018
and
CMP.No.16638 of 2018

RK(CO)
EU(16/11/2018)



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