

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2018

PRONOUNCED ON : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No.678 of 2018

and

CMP.No.16685 of 2018

T.Mathi ... Petitioner

Vs.

H.Swaminathan ... Respondent

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw and transfer the petition made in HMOP No.139 of 2018 on the file of the Principal Sub Ordinate Judge, Mayiladuthurai to the Principal Family Judge of Coimbatore.

For Petitioner : Mr.D.Selvakumar

For Respondent : Mr.R.Sreedhar

ORDER

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

2.All is not well qua the marital life of the parties.

3.The respondent has levied HMOP No.139 of 2018 against the petitioner for divorce and the same is pending on the file of the Principal Sub-Court, Mayiladuthurai.

4.Seeking transfer of the abovesaid proceeding to the Principal Family Court, Coimbatore, on the footing that HMOP laid by the petitioner for restitution of conjugal rights and the maintenance case levied by the petitioner against the respondent are all pending on the file of the Courts at Coimbatore and also putting forth that the petitioner is experiencing difficulty and hardship in attending the proceeding at Mayiladuthurai Court, considering the long distance and also the petitioner is required to look after her girl child, the transfer petition has been laid and prayed for transfer.

5.The respondent's counsel contended that the petitioner has been set exparte in HMOP No.139 of 2018 on 12.09.2018 itself and till date, the said order has not been set aside and in such view of the matter, with a view to overcome the abovesaid development, the petitioner has levied the transfer CMP containing false reasons and accordingly, it is stated that inasmuch as the petitioner had been delaying the proceeding one way or the other, the transfer petition should not be entertained and prayed for the dismissal of the petition.

6.It is represented by the petitioner's counsel that though the petitioner had been set exparte in

HMOP No.139 of 2018, however, the interlocutory application had been laid to set aside the order and the same is pending and therefore, it is his contention that the transfer request should be accepted.

7.The fact remains that the petitioner had been set exparte in HMOP No.139 of 2018 on 12.09.2018 itself. In such view of the matter, as on date, it is seen that the HMOP No.139 of 2018 is ready for recording the exparte evidence of the respondent and disposal. However, it is seen that the petitioner has come forward with the petition seeking the transfer of the proceeding to Coimbatore Court. But when the conduct of the petitioner goes to reveal that she is not vigilant in defending the proceeding at Mayiladuthurai Court and also endeavouring to delay the same one way or the other and till date, the exparte order passed against her has not been set aside, as rightly putforth by the respondent's counsel, the petitioner would be entitled to maintain the transfer petition only on the exparte order passed against her is set aside and in such view of the matter, in my considered opinion, as on date, the request for transfer prayed for by the petitioner cannot be countenanced.

For the reasons aforesated, the Transfer Civil Miscellaneous Petition is dismissed. Consequently, connected CMP No.16685 of 2018 is also dismissed.

Index : Yes / No

Internet : Yes / No

sms 12.10.2018

To

- 1.The Principal Sub-Court, Mayiladuthurai.
- 2.The Principal Family Court, Coimbatore.

T.RAVINDRAN, J.

sms

Pre-delivery Order made
in Transfer CMP.No.678 of 2018
and
CMP.No.16685 of 2018

12.10.2018