

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.753 of 2018
and C.M.P.No.18432 of 2018

Jeyapradha

.. Petitioner

versus

N.Moorthy

.. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.225 of 2018 pending on the file of the Family Court, Erode and transfer the same to any other competent Court at Karur.

For Petitioner : Mr.E.K.Kumaresan

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed to withdraw H.M.O.P.No.225 of 2018 pending on the file of the Family Court, Erode and transfer the same to any other competent Court at Karur.

सत्यमेव जयते

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 01.07.2009 at Kalvettupalayam, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were living in the matrimonial home at Chennai. Due to the wedlock, the petitioner gave birth on 13.07.2011 to one female child, namely, Ugathy. Subsequent to that, difference of opinion arose between them in the month of July 2016, the petitioner left the matrimonial home and living separately along with her parents at Karur. Further, she filed a petition before the learned Judicial Magistrate No.I, Karur, under the provisions of Domestic Violence Act, 2005. The said petition is

now pending before the Judicial Magistrate No.I, Karur as D.V.P.No.34 of 2016.

3. In the meantime, the respondent filed a petition before the Family Court, Erode, for the relief of annulling the marriage happened between them on 01.07.2009. As of now, the said petition is pending before the Family Court, Erode as H.M.O.P.No.225 of 2018. In the said petition, the respondent made various allegations against the petitioner.

4. According to the petitioner, she is residing at Karur along with her parents, being a lady, it is very difficult for her to go to Erode to attend the Court proceedings. Further, she is not having any independent income and she is depending on her parents for her day-to-day expenses and travelling expenses. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

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

6. Though notice was served on the respondent as early as on 08.11.2018 and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

7. In the said circumstances, in order to deny the averments made in the affidavit filed by the petitioner, the respondent has not turned up. As per the affidavit filed by the petitioner, as of now, she is residing with her parents at Karur and the connected petition related to the dispute between the petitioner and respondent is also pending before the learned Judicial Magistrate No.I, Karur. Further, in the affidavit filed by the petitioner she has specifically stated that, she is residing at Karur with her parents, being a lady, it is very difficult for her to attend the Court proceedings at Erode independently.

8. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by our Honourable Apex Court in the judgments 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.

9. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, he has not appeared before this Court, further as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account for considering the issue involved in these type of petitions. So, considering the various parameters laid already by the Hon'ble Apex Court as well as by this Court, this Court came to the conclusion that allowing the petition is the proper remedy for leading their cases by the petitioner and respondent.

10. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.225 of 2018 is ordered to be withdrawn from the file of the Sub Court, Erode and transferred to the file of the Sub Court, Karur. The Subordinate Judge, Erode, is directed to transmit all the records pertaining to H.M.O.P.No.225 of 2018 to the file of the Sub Court, Karur, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Subordinate Judge, Karur, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, (Family Court), Erode.

2.The Subordinate Judge, Karur.

+1 cc to M/s.E.K.Kumaresan, Advocate SR.No.86857

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GP(CO)
CSL/10.01.2019