

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.774 of 2018
and C.M.P.No.19050 of 2018

M.Tamilarasi

Petitioner

versus

R.Veeraragavan

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.79 of 2018 pending on the file of the Sub Court, Usilampatti and transfer the same to the file of the Sub Court, Tiruppur.

For Petitioner : Mr.K.C.Karl Marx

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed to withdraw H.M.O.P.No.79 of 2018 pending on the file of the Sub Court, Usilampatti and transfer the same to the file of the Sub Court, Tiruppur.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 11.03.2012 at Ariyapatti Kalyanakaruppasamy Mandapam, Ariyapatti, Usilampatti Taluk, Madurai, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were living in the matrimonial home at Ariyapatti in Madurai. Due to the wedlock, the petitioner gave birth to two female children and now, both of them are in the age of 5 years and one year respectively. Subsequent to gave birth to two female children, difference of opinion arose between them, the petitioner left the matrimonial home and living separately along with her parents at Tiruppur. Further, she filed an application

before the learned Judicial Magistrate No.II, Tiruppur under the provisions of Domestic Violence Act, 2005. The said application is now pending before the Judicial Magistrate No.II, Tiruppur as D.V.A.No.8 of 2018.

3. In the meantime, the respondent filed a petition before the Sub Court, Usilampatti, for the relief of restitution of conjugal rights. As of now, the said petition is pending before the Sub Court, Usilampatti as H.M.O.P.No.79 of 2018. In the said petition, the respondent made various allegations against the petitioner.

4. According to the petitioner, she is residing at Tiruppur along with her parents. The distance between her residence and Usilampatti is more than 150 kilometers and being a lady, it is very difficult for her to go to Usilampatti to attend the Court proceedings, along with her two children. 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 10.11.2018 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 Tiruppur and the connected petition related to the dispute between the petitioner and respondent is also pending before the learned Judicial Magistrate No.II, Tiruppur. Further, in the affidavit filed by the petitioner she has specifically stated that, she is residing at Tiruppur with her parents, being a lady, it is very difficult for her to attend the Court proceedings at Usilampatti 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.79 of 2018 is ordered to be withdrawn from the file of the Sub Court, Usilampatti and transferred to the file of the Sub Court, Tiruppur. The Subordinate Judge, Usilampatti, is directed to transmit all the records pertaining to H.M.O.P.No.79 of 2018 to the file of the Sub Court, Tiruppur, 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, Tiruppur, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, Usilampatti.

2.The Subordinate Judge, Tiruppur.

+1cc to Mr.K.C.Karl Marx, Advocate sr.no.86049

Tr.C.M.P.No.774 of 2018
and C.M.P.No.19050 of 2018

gp(co)
nr 09/01/2019