

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No.785 of 2018
and
CMP.No.19416 of 2018

Mrs. Shanmathy

Petitioner

Vs.

A. Panikar

Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.84 of 2018, pending on the file of the Subordinate Court, Vellore and to transfer the same to Family Court, Ooty.

For Petitioner : Mr.S. Makesh

For Respondent : Ms. K. Jenitha for
Mr. T. Dharani

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.84 of 2018, pending on the file of the Subordinate Court, Vellore and to transfer the same to Family Court, Ooty.

2. The petitioner is the wife and the respondent is her husband. The marriage between the petitioner and the respondent was conducted on 09.03.2017 at Lakshmi Palace Marriage Hall, Vellore District as per Hindu Rites and Customs. After the marriage, both the petitioner and the respondent were lived together in Ooty for a considerable period. In the meantime, the respondent got appointment in "Medical and Rural Health Services, Chennai" as a Nurse. So, he moved from Ooty and settled at Vellore. In the said circumstances, due to the difference of opinion arose between the petitioner and the respondent, the petitioner left the matrimonial home and settled with her parents in Ooty.

3. In the meantime, the respondent has filed an application before the Family Court, Chennai against the petitioner under Section 9 of Hindu Marriage Act, in which he is seeking the relief of restitution of Conjugal Rights. As of now, the above said case is pending with Family Court, Chennai in H.M.O.P No.84 of 2018. In the said circumstances, the petitioner has approached this Court by way of filing this application, praying to withdraw the above said petition from the file of Family Court, Vellore and to transfer the same to District Court, Ooty.

4. According to the petitioner, the distance between Ooty and Vellore is about 400 kms. The petitioner being an unemployed lady, it is very difficult for her to attend the Court proceedings at Vellore. Further, she is not having any independent income and she is depending upon her parents for her day to day expenses. Hence, allowing the petition is convenient for the petitioner for attending the Court proceedings.

5. On the other hand, the learned counsel appearing for the respondent would contend that since the respondent was employed under the Department of Medical and Rural Health Services, Chennai, it is very difficult for him to travel from Vellore to Ooty for attending the Court proceedings. According to him, the petition filed by the petitioner is liable to be dismissed.

6. Heard Mr.S. Makesh, the learned Counsel appearing for the petitioner and Ms. K. Jenitha for Mr. T. Dharani, the learned Counsel appearing for the respondent.

7. Considering the submissions made by either side, it is an admitted fact that as of now, the petitioner is residing with her parents, without any independent income. Thereby, it is very difficult for her to travel all along from Ooty to Vellore, for attending the Court proceedings. Further, considerable amount is necessary for the petitioner towards the travelling expenses for attending the Court proceedings at Vellore.

8. In the said circumstances, it is useful to refer the Judgment of our Honourable Apex Court, 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, in which, it was held that the convenience of the wife must be taken into account for deciding these type of applications. Further, in Hindu Marriage Act, there is an enabling provision is available that the convenience of the wife must be taken into account for disposing these type of issues raised in the matrimonial proceedings.

9. However, since Ooty is situated in the Hill

station, it is appropriate to transfer the petition mentioned proceedings from the file of Family Court, Vellore to the file of Subordinate Court, Mettupalayam. If the said case is transferred to Subordinate Court, Mettupalayam, it is convenient for both the petitioner and the respondent for attending the Court proceedings easily.

10. In the light of the above discussions, this Transfer civil Miscellaneous Petition is allowed. The case in H.M.O.P.No.84 of 2018 ordered to be withdrawn from the file of Subordinate Court, Vellore and ordered to be transferred to the file of Subordinate Court, Mettupalayam. The Subordinate Judge, Vellore is directed to transmit the case records pertaining to H.M.O.P.No.84 of 2018 to Subordinate Court, Mettupalayam within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the Subordinate Judge, Mettupalayam is directed to dispose the case as expeditiously as possible. The connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Subordinate Court, Vellore
2. The Subordinate Court, Mettupalayam

+1cc to Mr.S.Makesh, Advocate, S.R.No. 88118
+1cc to Mr.T.Dharani, Advocate, S.R.No. 88899

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and
CMP.No.19416 of 2018

SPD(CO)
GN(21/01/2019)

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