

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.793 of 2018
and C.M.P.No.19656 of 2018

L.Karthika

... Petitioner

versus

M.Manoj Kumar

... Respondent

Prayer: Petition is filed under Section 24[1] of C.P.C., to withdraw H.M.O.P.No.887 of 2018 pending on the file of the Family Court, Coimbatore and transfer the same to the Principal Sub Court, Thiruppur.

For Petitioner : Mr.A.T.Jayaraman

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24[1] of the Code of Civil Procedure to withdraw H.M.O.P.No.887 of 2018 pending on the file of the Family Court, Coimbatore and transfer the same to the Principal Sub Court, Thiruppur.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 04.03.2015 at Arulmigu Venkateswaraperumal Temple, Mondipalayam, Avinashi Taluk, Coimbatore District, as per Hindu rites and customs. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Coimbatore. After some time, from the date of marriage, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents at Thiruppur. Further, she filed a petition before the Sub Court, Thiruppur, for the relief of annulling the marriage happened between them on 04.03.2015. The said petition is now pending before the Sub Court, Thiruppur as H.M.O.P.No.360 of 2017.

3. In the meanwhile, the respondent has filed a petition against the petitioner before the Family Court, Coimbatore, for the relief of restitution of conjugal rights. As of now, the said petition is pending before the Family Court, Coimbatore as H.M.O.P.No.887 of 2018.

4. According to the petitioner, she is residing at Thiruppur along with her parents. The distance between her residence and Coimbatore is about 60 kms and being a lady, it is very difficult for her to attend the Court proceedings at Coimbatore. 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 19.11.2018 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 Thiruppur. Further, in the affidavit filed by the petitioner she has specifically stated that, she is residing at Thiruppur with her parents, being a lady, it is very difficult for her to attend the Court proceedings at Coimbatore.

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.887 of 2018 is ordered to be withdrawn from the file of the Family Court, Coimbatore and transferred to the file of the Principal Sub Court, Thiruppur. The Judge, Family Court, Coimbatore, is directed to transmit all the records pertaining to H.M.O.P.No.887 of 2018 to the file of the Principal Sub Court, Thiruppur, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Principal Subordinate Judge, Thiruppur, 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 Judge, Family Court, Coimbatore.
- 2.The Principal Subordinate Judge, Thiruppur.

+1cc to Mr.A.J.Jayaraman, Advocate Sr.89638

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rr[co]
srg 31/01/2019