

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29.11.2018

JUDGMENT PRONOUNCED ON : 10.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.Nos.815 and 702 of 2018
and C.M.P.Nos.17382 and 20068 of 2018

Tr.C.M.P.No.815 of 2018
S.Jothi Prasad .. Petitioner

versus

C.Jamuna .. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.328 of 2018 pending on the file of the Family Court, Salem and transfer the same to the file of the First Additional Family Court, Chennai.

For Petitioner : Mr.T.Arockia Dass

for M/s. Dass & Viswa Associates

For Respondent : Mr.R.Dinesh

Tr.C.M.P.No.702 of 2018

C.Jamuna .. Petitioner

versus

S.Jothi Prasad .. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.2622 of 2018 pending on the file of the First Additional Family Court, Chennai and transfer the same to the file of the Family Court, Salem.

For Petitioner : Mr.R.Dinesh

For Respondent : Mr.T.Arockia Dass
for M/s. Dass & Viswa Associates

C O M M O N O R D E R

The Transfer Civil Miscellaneous Petition No.815 of 2018 has been filed by the husband [S.Jothi Prasad] to withdraw F.C.O.P.No.328 of 2018 pending on the file of the Family Court, Salem and transfer the same to the file of the First Additional Family Court, Chennai.

2. The Transfer Civil Miscellaneous Petition No.702 of 2018 has been filed by the wife [C.Jamuna] to withdraw H.M.O.P.No.2622 of 2018 pending on the file of the First Additional Family Court, Chennai and to transfer the same to the file of the Family Court, Salem.

3. The parties and issues involved in both the Transfer Civil Miscellaneous Petitions are one and the same and therefore, they are disposed of by this common order. Parties are referred to as husband and wife for easy reference.

4. The marriage between the husband [S.Jothi Prasad] and wife [C.Jamuna] was conducted on 03.03.2014 at JBR Mahal, MC Road, Four way, Madanur, Vellore District, as per Hindu rites and customs. Subsequent to the marriage, since the husband was working as Branch Manager in Indian Overseas Bank, Vellore, the matrimonial home was set up in the above said place. Further, due to the transfer of her husband, the matrimonial home have been shifted to Tirupur and thereafter, at Thiruvannamalai. After some days from the date of marriage, the wife came to know that her husband was impotent, consequent of the said reason, the difference of opinion arose between the husband and wife and hence, they are started to live separately. In the said circumstances, the wife filed F.C.O.P.No.328 of 2018 on the file of the Family Court, Salem, against the husband, for annulling the marriage. Subsequent to that, the husband filed H.M.O.P.No.2622 of 2018 on the file of the First Additional Family Court, Chennai, against the wife, in which, he is seeking the relief for restitution of conjugal rights, in the said petition, he made various allegations against her.

5. According to the wife, she is residing at YWCA Hostel, 76-A, Cherry Road, Hasthampatty, Salem. She does not have a permanent job and has been depending on her aged parents for her livelihood. The distance between Salem and Chennai is more than 340 kms and being a lady, it is very difficult for her

to go to Chennai to attend the Court proceedings along with elderly persons. Therefore, she prays that the petition in H.M.O.P.No.2622 of 2018 may be withdrawn from the file of First Additional Family Court, Chennai and transferred to the file of Family Court, Salem.

6. Per contra, the learned counsel for the husband submitted that the husband is working in the Bank, hence it will be difficult for him to attend the court proceedings at Salem. If the case is transferred from the First Additional Family Court, Chennai, to the Family Court, Salem, the husband has to appear before the Court for each and every hearing, which is very difficult for him. Hence, he prayed for dismissal of the Tr.CMP.No.702 of 2018 and allowing the Tr.CMP.No.815 of 2018.

7. Heard the learned counsel appearing for the husband as well as the learned counsel appearing for the wife and also perused the materials available on record.

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 the Hon'ble Supreme 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, it is not disputed fact that the wife was stayed in YWCA Hostel and attended her day-to-day work, 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 Tr.C.M.P.No.702 of 2018 is the proper remedy for leading their cases by the husband and wife. Accordingly, the petition in H.M.O.P.No.2622 of 2018 is ordered to be withdrawn from the file of First Additional Family Court, Chennai and transferred to the file of Family Court, Salem. The First Additional Judge, Family Court, Chennai, is directed to transmit all the records pertaining to H.M.O.P.No.2622 of 2018 to the file of Family Court, Salem, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said proceedings, the learned Judge, Family Court, Salem, is

directed to dispose of both the HMOPs. as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

10. Accordingly, the Tr.C.M.P.No.702 of 2018 filed by the wife is ordered and Tr.C.M.P.No.815 of 2018 filed by the husband is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Judge, Family Court, Salem.

2.The First Additional Judge, Family Court, Chennai.

+1 cc to M/s.Dass Viswa Associates, Advocate Sr.No.85591

Common Order made in
Tr.C.M.P.Nos.815 and 702 of 2018

SS(CO)
CSL/03.01.2019

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