



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Fifth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

WEB COPY

CMP(MD) Nos.1798 and 1799 of 2018
IN
TR CMP(MD) No.517 of 2017

MR.M.G.RAJA ... PETITIONER(IN BOTH PETITIONS)

Vs

MRS. S. KAVITHA ... RESPONDENT(IN BOTH PETITIONS)

Prayer in CMP(MD)No.1798/2018:-

Civil Miscellaneous Petition is filed under Order 41 Rule 21 of Civil Procedure Code praying this Hon'ble Court to recall the order passed in Tr.C.M.P.(MD)No.517 of 2017 dated 18.12.2017.

Prayer in CMP(MD)No.1799/2018:-

Civil Miscellaneous Petition is filed under Section 151 of Civil Procedure Code praying this Hon'ble Court to Stay all further proceedings in H.M.O.P.No.14 of 2018 on the file of Family Court, Srivilliputhur pending disposal of the above Transfer Civil Miscellaneous Petition.

Prayer in Tr.CMP(MD)No.517/2017: This Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, praying this Hon'ble Court to pass an order to withdraw the H.M.O.P.No.175 of 2017 on the file of the Principal Sub-Court, Tenkasi and transfer the same to the Family Court, Srivilliputtur for trial.

ORDER : This petition coming on for hearing on this day, upon perusing the affidavit and material papers filed, and the earlier Order of this Court dated 18/12/2017 and upon hearing the arguments of M/S.A.SIVAJI, Advocate for the petitioner and of Mr.K.Sekar, Advocate for the Respondent, this Court made the following Order:-

These Civil Miscellaneous Petitions have been filed to recall the order dated 18.12.2017 and thereby, to restore the Tr.CMP(MD) No.517 of 2017 and to stay all further proceedings in HMOP No.14 of 2018 on the file of Family Court, Srivilliputhur pending disposal of the above Tr.CMP(MD) No.517 of 2017.

2. This Court, by an order dated 18.12.2017 in Tr.CMP(MD) No.517 of 2017 has observed as follows:



"In the result, this petition is allowed. HMOP No.175 of 2017 is pending on the file of the Principal Sub Court, Tenkasi, is directed to be transferred to the file of the Family Court, Srivilliputhur, for disposal. The Transferee Court is directed to expedite the trial and dispose of the case as early as possible. consequently, the connected Civil Miscellaneous Petition is closed."

3. The learned Counsel for the petitioner would submit that the petitioner is unable to move anywhere, due to his right leg fracture. He would further submit that the petitioner has given Vakalat on 9.12.2017 and the same was filed before this Court on 15.12.2017. Unfortunately, in the cause list, instead of the counsel name, the petitioner name was printed. Since the Counsel name was not printed, the counsel was unable to attend the case at the time of hearing.

4. The learned Counsel for the respondent would contend that in order to drag on the proceedings, the petitioner has filed this petition.

5. It is well settled law that convenience of woman is paramount while considering transfer application as held by the Supreme Court in the judgment reported in **2008(9)SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)**. Even if the petitioner/respondent is permitted to argue, the result would be the same. There is no merit in these applications and hence, these Civil Miscellaneous Petitions are liable to be dismissed. However, considering the request of the petitioner, the Registry is directed to print the name of Mr.A.Sivaji, learned Counsel for the petitioner/ respondent in the order copy dated 18.12.2017 and issue fresh order copy.

6. With the above observation, these Civil Miscellaneous Petitions are dismissed. No costs.

Sd/-

Assistant Registrar(CSI)

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE PRINCIPAL SUBORDINATE JUDGE, TENKASI

2.THE JUDGE, FAMILY COURT, SRIVILLIPUTHUR

+One cc to Mr.A.Sivaji, Advocate, SR.No.53163

RL/4C/2P/SKN/RSK/SAR1/19/3/2018

ORDER DATED : 05/03/2018

ORDER

CMP(MD) Nos.1798 and 1799
of 2018

IN

TR CMP(MD) No.517 of 2017
Giving Direction etc.,
as stated within