



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN,J

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Transfer C.M.P.(MD) Nos.127 and 128 of 2018
and C.M.P.(MD) Nos.2743 and 2744 of 2018

S.B.Ramya

... Petitioner in both petitions
-Vs-

S.Suthar Sunjay

... Respondent in both petitions

Common Prayer : Petitions filed under Section 24 of the Code of Civil Procedure praying to withdraw the proceedings in HMOP Nos.53 and 133 of 2016 on the file of the Principal Subordinate Court, Nagercoil, Kanyakumari District and to transfer the same to the Family Court, Chennai.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondent : Mr.M.Suri

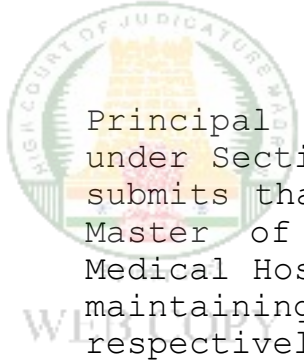
Orders Reserved on	08.06.2018
Orders Pronounced on	27.06.2018

C O M M O N O R D E R

The petition in Tr.CMP(MD)No.127 of 2018 has been filed to transfer the proceedings in HMOP No.53 of 2016 on the file of the Principal Sub Court, Nagercoil, which has been filed by the wife for dissolution of marriage, to the Family Court, Chennai. The petition in Tr.CMP(MD)No.128 of 2018 has been filed to transfer the proceedings in HMOP No.133 of 2016 on the file of the Principal Sub Court, Nagercoil, which has been filed by the respondent / husband for restitution of conjugal rights, to the Family Court, Chennai.

2. The petitioner herein is the wife and the respondent herein is the husband. The HMOP No.53 of 2016 has been filed by the petitioner praying to dissolve the marriage held on 04.11.2012 between the petitioner and the respondent herein. The HMOP No.133 of 2016 has been filed by the respondent praying for restitution of conjugal rights.

3. The learned counsel for the petitioner submits that the marriage between the petitioner and the respondent took place on 04.11.2012 at Hotal Udupi International, Saruvamangalam Mandabam, Vadasery at Nagercoil. He further submits that the petitioner has undergone harassment at the hands of the respondent and as a result, the petitioner has filed HMOP No.53 of 2016 on the file of the

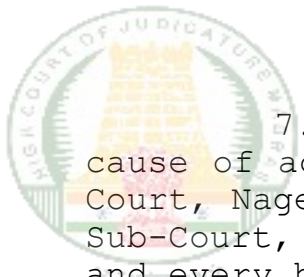


Principal Sub-Court, Nagercoil praying to dissolve the marriage under Section 13(i)(i-a) of the Hindu Marriage Act 1955. He further submits that the petitioner is studying her Post Graduate Course in Master of Surgery Course (General Surgery) at Sri Ramachandra Medical Hospital and College at Chennai. Further, the petitioner is maintaining her two young children aged about 5 years and 4 years respectively. Therefore, the petitioner finds it difficult to attend each and every hearing at Nagercoil. Further, there is a threat to her life at the hands of the respondent and therefore, prays for transferring both the petitions filed by the petitioner in HMOP No.53 of 2016 for dissolution of marriage and the petition filed by the respondent in HMOP No.133 of 2016 for restitution of conjugal rights from the file of the Principal Sub-Court, Nagercoil to the file of the Family Court, Chennai.

4. Per contra, the learned counsel for the respondent refuted all the allegations raised by the petitioner and further submitted that the petitioner is a native of Kanyakumari District. Further, only to harass the respondent herein, the petitioner has filed these applications seeking transfer of the cases. Therefore, he prayed for dismissal of the same.

5. Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner and Mr.M.Suri, learned counsel for the respondent and perused the materials available on record.

6. It is not in dispute that the marriage took place between the petitioner and the respondent on 04.11.2012 at Hotel Udupi International Saruvamangalam Mandabam, Vadasery. It is also admitted that both the petitioner and the respondent are permanent resident of Kanyakumari District and the cause of action for both the HMOP No.53 of 2016 and 133 of 2016 arose within the jurisdiction of the Kanyakumari District. It is also submitted by the respondent that the two children are studying at Adharsh Vidhya Kendra at Nagercoil and the same is not denied by the petitioner. It is a well settled law that the convenience of the wife is a primary factor to be considered while deciding applications for transfer of matrimonial proceedings. In the present case, both the petitioner and the respondent are permanent residents of Kanyakumari District and the two children are also studying at Nagercoil and the cause of action of both the petitions are also within the jurisdiction of the Principal Sub-Court, Nagercoil. Merely because the petitioner apprehends threat to life, which is not supported by any material evidence, the petitions cannot be transferred for flimsy reasons and also on the mere asking. It is also pertinent to mention here that she seeks transfer on the reasoning that she is doing her P.G. in Chennai, that too, for a limited period. After completion of her studies, she may choose to join some other course in some other District and the petitions cannot be transferred here and there for temporary arrangements, which may lead to protraction of proceedings instead of giving quietus to the issue.



7. In the present case on hand, it is very clear that the cause of action arose within the jurisdiction of the Principal Sub-Court, Nagercoil. Further since the proceedings are taking place at Sub-Court, the appearance of parties is also not required for each and every hearing like that of the one before the Family Court.

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8. In view of what is narrated hereinabove, finding no merits in both these petitions, this Court is of the view that the Transfer Petitions are liable to be dismissed.

9. In the result,

a) both these Transfer Petitions are dismissed;

b) learned Principal Sub-Judge, Nagercoil, Kanyakumari District is directed to dispose of HMOP Nos.53 and 133 of 2016 within a period of three months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To:

The Principal Sub-Judge,
Nagercoil.

+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No.70177
+1CC to Mr.M.Suri, Advocate, SR.No.70059

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and
C.M.P. (MD) Nos.2743 and 2744 of 2018
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VSV

ES/VR/SAR 2/02.07.2018/3P/4C