



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.03.2018

CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
TR.C.M.P (MD).No.51 of 2018
and
C.M.P (MD)No.1193 of 2018

K.Devi

... Petitioner

Vs.

C.Rajinikanth

... Respondent

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw the H.M.O.P.No.22 of 2018 on the file of the Principal Subordinate Court, Trichy and transfer the same to the file of the Family Court, Trichy, by directing it to be tried along with the HMOP No.431 of 2017, pending on the file of the Family Court, Trichy.

For petitioner :Mr.K.K.Senthil

For respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.22 of 2018 from the file of the Principal Subordinate Court, Trichy to the file of the Family Court, Trichy so as to try the same along with the HMOP No.431 of 2017, which is pending before the Family Court, Trichy.

2. It is stated in the petition that the marriage between the petitioner and the respondent was solemnized on 22.03.2009. After marriage, both of them lived happily for some time and thereafter, the respondent went to Singapore on 13.04.2014. The petitioner gave birth to a female child on 04.10.2014. Thereafter, the respondent never turned up even to see the child and as the respondent deserted the petitioner and child without any valid reason, the petitioner filed HMOP No.431 of 2017 for divorce on the file of the Family Court, Trichy. During conciliation on 29.11.2018, it was recorded that both the parties are not willing for reunion. While so, the respondent herein / husband of the petitioner has filed H.M.O.P.No.22 of 2018 for restitution of conjugal rights.

3. The grievance of the petitioner is that in order to harass the petitioner, the respondent has filed the present restitution of conjugal rights petition. The petitioner attended each and every



hearing before Family Court, Trichy along with her child. It is difficult for the petitioner to attend two separate proceedings with her child. Hence, she prays for transfer of the case filed by the respondent herein to try along with HMOP.No.431 of 2017.

4. The learned counsel for the petitioner reiterated the averments made in the petition.

5. Though notice has been served to the respondent and his name is printed in the cause list, he did not appear either in person or through any counsel.

6. Heard the learned Counsel for the petitioner and perused the materials available on record.

7. I am satisfied with the reasons stated in the affidavit filed in support of this petition. The Hon'ble Supreme Court in the judgment reported in 2008 (9)SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta), has held that convenience of woman is to be taken into consideration first at the time of considering transfer applications. Hence, I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Principal Subordinate Judge, Trichy, is directed to transmit the entire records in H.M.O.P.No.22 of 2018 to the file of the Family Court, Trichy, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Family Court Judge, Trichy, after obtaining the records on transfer, is directed to try both H.M.O.P.Nos.431 of 2017 and 22 of 2018, together and dispose of the same on merits and in accordance with law, as expeditiously as possible.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The Judge, Family Court, Trichy.

2.The Principal Subordinate Judge, Trichy.

+1cc to Mr.K.K.SENTHIL, Advocate, SR.No.57009

TR. C.M.P(MD).No.51 of 2018

20.03.2018

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