



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P(MD).No.6 of 2018

and

C.M.P(MD)No.117 of 2018

Maheswari

... Petitioner/Respondent

Vs.

S.Esakkimani

... Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, praying to withdraw the case in H.M.O.P.No.136 of 2017 on the file of the Subordinate Court, Kovilpatti and transfer the same to the file of the Family Court, Madurai to be tried along with H.M.O.P.No.616 of 2017.

For petitioner : Mr.R.Subramanian
For respondent : Ms.J.Balameenakshi

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.136 of 2017 from the file of the Subordinate Court, Kovilpatti to the file of the Family Court, Madurai to be tried along with H.M.O.P.No.616 of 2017.

2. It is stated in the petition that the petitioner is a disabled person and the marriage between the petitioner and the respondent was solemnized on 23.01.2014. After marriage, both of them lived together for some time and they blessed with a male child and the child is now aged about 3 years. Later, due to misunderstanding, the respondent herein has left her in the parental home and thereafter, he has not taken back her. Hence, the petitioner has filed H.M.O.P.No.616 of 2017 for restitution of conjugal rights. While so, the respondent has filed H.M.O.P.No.136 of 2017 for divorce with the false allegations before the Subordinate Court, Kovilpatti. The grievance of the petitioner is that the respondent being a resident of Kovilpatti has filed the above petition at the Subordinate Court, Kovilpatti, whereas the petitioner is residing at Madurai, along with her aged parents and minor child, and as she is a disabled person and she is depending upon her aged parents, it is very difficult for her to travel about 105 kms from Madurai to Kovilpatti, along with the child, aged about 3 years, for attending each and every hearing of the case and therefore, H.M.O.P.No.136 of 2017 may be transferred to the file of the Family Court, Madurai, and the same may be tried along with H.M.O.P.No.616 of 2017 which is pending on the file of the very same Court.



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

4. The learned counsel for the respondent vehemently opposed to the grant of relief.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. 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 application. In view of the above and also considering the fact that the petitioner is a disabled person, I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Subordinate Judge, Kovilpatti is directed to transmit the entire records in H.M.O.P.No.136 of 2017 to the file of the Family Court, Madurai within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Family Court Judge, Madurai, after obtaining the records on transfer, is directed to tag H.M.O.P.No.136 of 2017 along with H.M.O.P.No.616 of 2017 and dispose of both the matters on merits and in accordance with law, as expeditiously as possible.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To,

- 1.The Subordinate Judge, Kovilpatti.
- 2.The Judge, Family Court , Madurai.

+1cc to Mr.R.Subramanian, Advocate Sr.No.57790

GCG

VB/SKN/RSK/SAR2/01.06.2018/2P/4C