



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

TR.C.M.P.(MD)No.173 of 2018

and

C.M.P.(MD)No.4185 of 2018

J.Kalpana

... Petitioner/Respondent

Vs.

S.Sreenath

Rep. by his Power Agent and Mother

Saraswathy

... Respondent/ Petitioner

Prayer: Petition filed under Section 24 of Civil Procedure Code praying to withdraw the H.M.O.P.No.14 of 2018 on the file of the Sub Court, Aruppukottai and transfer the same to the file of Family Court, Madurai.

For Petitioner : Mr.A.Kannan

For Respondent : Mr.C.M.Arumugam

ORDER

The petitioner got married to the respondent on 26.01.2015. The marital relationship between the parties appears to have come under strain. No child was born through the said wedlock. Both the parties are working in United States of America. Both are IT professionals. The respondent herein filed H.M.O.P.No.14 of 2018 before the Sub Court, Aruppukottai, for dissolving their marriage. The respondent had filed the said H.M.O.P., through his power agent, ie., his mother, namely, Saraswathy.

2. The petitioner has filed this Transfer Civil Miscellaneous Petition for transferring the said H.M.O.P., from Sub Court, Aruppukottai, to Family Court, Madurai. This Court had granted interim stay of the proceedings. When the matter was taken up for disposal today, it is reported by the Counsel on both sides that since the marriage has irretrievably broken down, there is absolutely no scope for reunion and that the parties have decided to go their separate ways. In fact, the Counsel for the petitioner is having a memo signed by the petitioner for submitting to decree. But, this Court is of the view that in such a case, only a petition under Section 13(B) of Hindu Marriage Act will lie.



3. The respondent is presently in United States of America. The petitioner has come down to India and she has to return by 29.09.2018. Taking note of the change in visa regime, this Court can understand the plight of the parties. This Court, by insisting upon the personal appearance of the respondent, should not jeopardize his career abroad. Hence, the procedure contemplated by law may have to be tweaked a little bit. The respondent is represented by his power agent and mother in the H.M.O.P., filed before the Sub Court, Aruppukottai. This Court permits the respondent's mother cum power agent, namely, Saraswathy and the petitioner herein to file an application for converting H.M.O.P.No.14 of 2018 into a petition under Section 13(B) of the Hindu Marriage Act. Since the H.M.O.P., was filed way back in December 2017, the question of waiving the six months period may not really arise in this case. Of course, the Court below will have to satisfy itself that the respondent, namely, the husband, is also willing for such a mutual consent divorce. His evidence can be taken through video conference. The Counsel appearing for both the parties shall authenticate the identity of the person giving evidence through video conference facility. Upon being satisfied that both the parties are consenting for a mutual consent divorce, the Court below shall allow the amended H.M.O.P., as prayed for.

4. Taking into account the fact that the petitioner herein has to return to United States of America by 29.09.2018, the Court below is requested to conclude the entire proceedings on or before 27.09.2018. It is seen that the matter is posted for hearing before the Court below on 27.09.2018. The Court below shall advance the hearing of the case from 27.09.2018 to 24.09.2018.

5. It is also seen that this Court has directed both the parties to appear before the Mediation and Conciliation centre, attached to this Bench, on 17.09.2018. Taking note of the fact that the respondent is unable to come down to India, the said requirement is dispensed with.

6. With the above observations and directions, this transfer civil miscellaneous petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

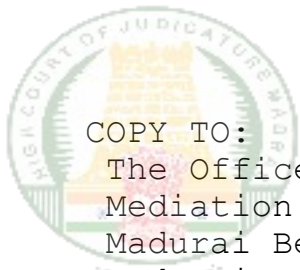
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Sub Assistant Registrar (CS-IV)

To

The Subordinate Judge,
Aruppukottai.

<https://hcservices.ecourts.gov.in/hcservices/>



COPY TO:
The Officer in charge,
Mediation and Conciliation centre,
Madurai Bench Of Madras High Court,
Madurai.

WEB COPY

+1cc to Mr.C.M.Arumugam, Advocate in sr.no.85822.
+1cc to Mr.A.Kannan Advocate in sr.no.85117.

GK

DS SV SAR-4:20.09.2018: 3P/5C

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and
C.M.P. (MD) No.4185 of 2018
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