



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
TR.C.M.P. (MD) .No.327 of 2018

Vimala ... Petitioner/Petitioner
Vs.
Senthilkumar ... Respondent/Respondent

PRAYER : Transfer Civil Miscellaneous petition is filed under Section 24 of the Civil Procedure Code, to withdraw and transfer H.M.O.P.No.60 of 2017 on the file of the Subordinate Court, Pudukottai, to the Subordinate Court, Kulithalai.

For Petitioner : Mr.K.Govindarajan
For Respondent : Mr.S.Karthick Subramanian

O R D E R

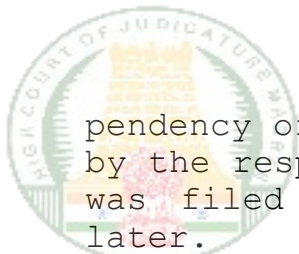
The petitioner herein got married to the respondent on 22.08.2010. A female child was born through the said wedlock. The petitioner filed M.C.No.1 of 2017 before the Judicial Magistrate Court No.I, Kulithalai, seeking maintenance. The allegation of the petitioner is that as a counter blast, the respondent filed H.M.O.P.No.60 of 2017 before the Subordinate Court, Pudukottai, for divorce.

2. The petitioner has filed this Transfer Civil Miscellaneous petition on 31.07.2018. However, the Transfer Civil Miscellaneous petition came up for admission before me only on 05.09.2018. I directed issuance of notice and list the matter on 25.09.2018.

3. When the matter was taken up for hearing today, the learned counsel appearing for the respondent/husband submits that the wife was set ex-parte in the meanwhile and decree has been passed allowing the divorce petition filed by the respondent and nothing survives for adjudication in this Transfer Civil Miscellaneous petition.

4. The dates and events are significant. The petitioner/wife was set ex-parte on 30.08.2018. Thereafter, ex-parte evidence was also taken. Ex-parte decree was passed on 10.09.2018.

5. The specific case of the respondent is that he received notice in the Transfer Civil Miscellaneous petition only at 3.00 p.m., on the said date. This Court does not blame the learned counsel appearing for the respondent or the Court below. But the fact remains that these developments had taken place only during the



pendency of this Transfer Civil Miscellaneous petition. As admitted by the respondent himself, the Transfer Civil Miscellaneous petition was filed as early as on 31.07.2018. She was set ex-parte only later.

6. This Court cannot lose sight of the fact that the petitioner is a young woman. She had also filed a maintenance case before the Judicial Magistrate Court No.I, Kulithalai. In these circumstances, exercising my jurisdiction under Article 227 of the Constitution of India, I set aside the ex-parte decree made in H.M.O.P.No.60 of 2017 on the file of the Sub Court, Pudukottai.

7. Since the petitioner is a woman and is having a young child to take care, it will be very difficult for her to go over to Pudukottai and contest the proceedings there. Therefore, this Court withdraws H.M.O.P.No.60 of 2017 from the file of the Subordinate Court, Pudukottai and transfers the same to the file of the Sub Court, Kulithalai. The petitioner herein is given one more opportunity to contest the H.M.O.P. The learned Subordinate Judge, Kulithalai, shall issue fresh notice of hearing to the respondent herein. The petitioner herein has not filed her counter, even though the H.M.O.P. was filed way back in March 2017. The petitioner is strictly directed to file her counter and get along with the H.M.O.P. The learned Subordinate Judge, Kulithalai, shall dispose of H.M.O.P.No.60 of 2017 filed by the respondent within a period of six months from the date of receipt of a copy of this order.

8. With these directions, the Transfer Civil Miscellaneous petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

pmu

To

1. The Subordinate Judge,
Kulithalai.

2. The Subordinate Judge,
Pudukottai.

3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Govindarajan, Advocate in SR No.87035

+1cc to Mr.S.Karthick Subramanian, Advocate in SR No.87303

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

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NM/SV/SAR I/30.10.18/2P/6C.