



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 16.04.2018
Pronounced on : 24.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Tr.C.M.P. (MD) Nos.444 & 476 of 2017
and
CMP (MD) Nos.8824 & 9485 of 2017

M.Keerthana .. Petitioner in both the Tr.CMPs

vs.

Mahendran .. Respondent in both the Tr.CMPs

Prayer in Tr.CMP(MD)No.444 of 2017: Petition filed under Section 24 of C.P.C. to withdraw the case in F.C.O.P.No.344 of 2017 on the file of the Family Court, Salem and transfer the same to the Family Court, Madurai and try along with the case in H.M.O.P.No.596 of 2017.

Prayer in Tr.CMP(MD)No.476 of 2017: Petition filed under Section 24 of C.P.C. to withdraw the case in G.O.P.No.10 of 2017 on the file of the Family Court, Salem and transfer the same to the Family Court, Madurai and try along with the case in H.M.O.P.No.596 of 2017.

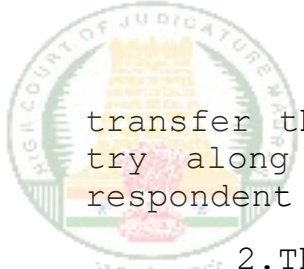
(In both the Tr.CMPs) :

For Petitioner Mr.S.Karthik Subramanian

For Respondent : M/s.S.Saravana Priya

COMMON ORDER

In both these Transfer Petition the wife is the petitioner. In Tr.CMP(MD)No.444 of 2017 the petitioner herein sought for transferring of F.C.O.P.No.344 of 2017 filed by respondent/husband for divorce against the petitioner herein on the ground of adultery from the file of the Family Court, Salem, to the file of the Family Court at Madurai. In Tr.CMP(MD)No.476 of 2017 the petitioner/wife seeking to transfer the G.O.P.No.10 of 2017 filed by the husband/respondent herein before the Family Court, Salem to the file of the Family Court, Madurai. The petitioner/wife is seeking to



transfer the above said cases to the Family Court, Madurai and to try along with the divorce petition filed by her against the respondent in H.M.O.P.No.596 of 2017.

2.The learned counsel for petitioner/wife submitted that the marriage between her and the respondent herein was solemnized on 30.11.2011 and out of the said marriage, they were blessed with female child. Their marriage life went to happily for some time and thereafter the petitioner herein /wife was ill-treated by the husband/respondent herein and used to come with drunken condition on every day and the same cannot be tolerated by the petitioner. At last she left from the matrimonial house and living with her parent's house at Madurai along with her female child from April 2017 onwards.

3.The learned counsel further submitted that since she could not tolerate the further harassment and dowry demand made by the husband/ respondent herein, as a last resort, she was constrained to file divorce petition in H.M.O.P.No.596 of 2017 before the Family Court, Madurai on the ground of cruelty.

4.On receipt of summon in the above Divorce Petition, the husband/respondent herein filed divorce petition in F.C.O.P.No.344 of 2017 before the Family Court, Salem on the ground of adultery. He also filed another petition seeking custody of minor child in G.O.P.No.10 of 2017 before the Family Court at Salem. The petitioner also filed M.C.No.110 of 2017 before the Family Court at Madurai seeking for maintenance to her and minor daughter from the respondent herein. Since the petitioner is residing at Madurai in her parent's house along with her minor child, it is not possible for her to go over to Salem to attend the above said two cases filed by the husband/respondent herein before the Family Court at Salem.

5.The learned counsel for the petitioner would further submit that the distance between Madurai to Salem is more than 200 KM and it consume minimum travel time of 6 hours. In such circumstance the petitioner approached this Hon'ble Court seeking transfer of the above said two cases filed by the respondent/husband from the file of Family Court at Salem to the file of Family Court at Madurai and try along with H.M.O.P.No.596 of 2017 filed by the petitioner/wife.

6.Per contra, the learned Counsel for the respondent herein submitted that the respondent is working at Salem and therefore it is not possible for him to appear before the Family Court at Madurai on every hearing. If the cases filed by him are transferred to the Family Court at Madurai, it will affect his job. Therefore the learned counsel for respondent prays this Court to dismiss the transfer petition filed by the petitioner/wife.

7.The learned counsel for the respondent also submitted that all allegations levelled in the transfer petitions are all baseless and the same is denied as false. The petitioner herein is not permitting the respondent to visit his minor daughter. Hence he filed the above guardian original petition.



8.I heard Mr.S.Karthik Subramanian, learned counsel appearing for the petitioner and M/s.S.Saravana Priya, learned counsel for the respondent in both the Transfer C.M.P.s and perused the entire materials available on record.

9.The perusal of records reveals that admittedly the petitioner herein only filed divorce petition and maintenance petition before the Family Court at Madurai on 03.08.2017. Thereafter, only the respondent/husband has filed the above divorce O.P. and Guardian O.P. before the Family Court at Salem. Further, it is also an admitted fact that the petitioner herein is residing at Madurai along with his minor child in her parent's house. At this juncture, it is to be noticed that whenever the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Apex Court in the decision reported in 2008 (9) Supreme Court Cases 353.

10.In this case, as stated supra, the Petitioner/Wife is living with her parents at Madurai and therefore she may not be in a position to travel to a faraway place that too the distance of more than 200 K.M. with a minor child.

11.In the view of the discussion made above and in the light of the decision cited supra, this Court is of the considered view that both the Transfer Civil Miscellaneous Petitions filed by the Wife deserves to be allowed and accordingly allowed.

12.In the result:

(a) both the Transfer Civil Miscellaneous Petitions are allowed and F.C.O.P.No.344 of 2017 and G.O.P.No.10 of 2017 are withdrawn from the file of the Family Court, Salem and transferred to the file of the Family Court, Madurai and both are directed to be tried along with H.M.O.P.No.596 of 2017, which is pending before the Family Court at Madurai;

(b) the learned Family Court Judge, Madurai is directed to dispose of the above H.M.O.Ps as expeditiously as possible, but not later than four months from the date of receipt of a copy of this order. Both the parties are directed to give their fullest co-operation for the speedy disposal of the above H.M.O.Ps. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Family Court,
Madurai.

+1CC to Mr.S.Karthick Subramanian Advocate in SR.No.74923.

VSV

DS/RP/SAR-1 :02.08.2018: 4P/4C

order made in
Tr.C.M.P. (MD) Nos.444 & 476 of 2017
and
CMP (MD) Nos.8824 & 9485 of 2017
24.07.2018