



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

TR CMP (MD)No.449 of 2017
and
CMP (MD)No.8867 of 2017

Rajamani ... Petitioner/Respondent
Vs.
1.J.Rajesh ... 1st respondent / petitioner
2.P.Senthilkumar ... 2nd Respondent / Respondent

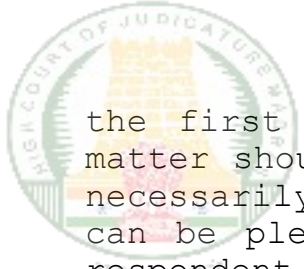
Prayer : This Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to transfer the HMOP No.200 of 2017 pending on the file of the learned Sub Court, Thoothukudi to the learned Sub Court, Madurai.

For Petitioner : Mrs.Thilaga Bala Subramanian
For Respondent No.1 : Mr.R.Vijayakumar
For Respondent No.2 : Unclaimed.

ORDER

The petitioner herein is the respondent in HMOP.No.200 of 2017 on the file of the Sub Court, Tuticorin instituted by the first respondent herein. The marriage between the parties took place on 25.05.2005 at Madurai. Two children have been born through the wedlock. It appears that the relationship between the parties came under strain owing to certain circumstances that impelled the first respondent to file the aforesaid divorce O.P. To transfer the same to the Family Court, Madurai, the present Transfer Civil Miscellaneous Petition has been filed in 3rd week of September, 2017.

2.When the matter was taken up for hearing, the learned counsel for the first respondent submitted that the first respondent had instituted GWOP No.78 of 2017 before the District Court, Tuticorin and that to transfer the same, the petitioner herein filed TR CMP (MD)No.504 of 2017 before this Court. The said Transfer CMP came to be dismissed as withdrawn on 28.03.2018. The learned counsel for



the first respondent therefore submitted that this aspect of the matter should be taken note of. Since the petitioner will have to necessarily come down to Tuticorin for defending GWOP no hardship can be pleaded by her for contesting the HMOP filed by the first respondent before the Sub Court, Tuticorin. He would further submit that this Court can transfer the HMOP pending before the Sub Court to the file of the District Court so that it can be taken up along with GWOP.

3.This Court is unable to agree with the said submission of the learned counsel for the first respondent. As rightly pointed out by the learned counsel for the petitioner, this Transfer CMP came to be filed in the 3rd week of September, 2017, GWOP was filed only in the 2nd week of October, 2017. It is quite possible that after receiving the notice in this Transfer CMP, the said GWOP came to be filed. Therefore, this Court will not be swayed by the pendency of the GWOP before the District Court, Tuticorin and that the petitioner herein withdrew her Transfer CMP filed in that regard.

4.The fact remains that the petitioner is a woman. The marriage between the parties took place only at Madurai. The petitioner has already instituted HMOP.No.139 of 2018 before the Family Court, Madurai seeking restitution of conjugal rights. A divorce petition and a petition for conjugal rights will have to be tried together. Since the petitioner is a woman and she is not employed, the indulgence of this Court would rather weigh with the petitioner. Therefore, HMOP No.200 of 2017 on the file of the Sub Court, Tuticorin is withdrawn and is transferred to Family Court, Madurai so that it can be tried together with HMOP No.139 of 2018.

5.The learned counsel for the first respondent pleaded that the first respondent would be put to hardship since he will have to attend every hearing before the Family Court, Madurai. He therefore wanted this Court to grant him relief with regard to the dispensing with his personal appearance. He submitted that the first respondent is doing business. It will cause great difficulty to come down to Madurai regularly.

6.Finding force in the said request, this Court directs the Family Court Judge to permit the first respondent to be represented through his counsel both in the divorce petition as well as the petition for conjugal rights. Normally, this Court does not issue a direction for the speedy disposal without being appraised of the work load of the concerned court. A litigant will have to necessarily come in the queue. But then, in matters of transfer, a different yardstick will have to be adopted. Therefore, this Court directs the learned Family Court Judge to dispose both the petitions before 31st August, 2019. The learned counsel for the petitioner on instructions from the petitioner undertakes to extend her fullest co-operation for the speedy disposal. Because this undertaking has been given, the relief of transfer is granted.



7. This Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (P&A)

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Sub Assistant Registrar

To,

1. The Sub Judge, Thoothukudi

2. The Judge, Family Court, Madurai.

3. The Principal District Judge, Thoothukudi.

+1cc to Mr. R. VIJAYAKUMAR, Advocate, SR.No.79080

+1cc to Mr. THILAGA BALASUBRAMANIAN, Advocate, SR.No.79020

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