



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.09.2017
Pronounced on : 28.03.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P(MD) .Nos.577 to 579 of 2016
and
C.M.P(MD)Nos.12231 to 12233 and 12291 of 2017

V.P.Balaji ... Petitioner/Respondent in all petitions

Vs.

R.B.Subhashini ... Respondent/Petitioner in all petitions

Prayer in Tr.CMP(MD) .Nos.577 to 579 of 2016: Transfer Civil Miscellaneous Petitions have been filed under Section 24 of Civil Procedure Code to withdraw M.C.No.35 of 2015, H.M.O.P.No.12 of 2015 and G.W.O.P.No.8 of 2015 on the file of the Family Court, Dindigul and transfer the same to Family Court at Madurai.

For Petitioner : Mr.R.S.Sivaram

For Respondent : Mr.A.Jeyaramachandran

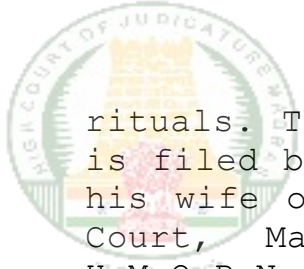
COMMON ORDER

These Transfer Civil Miscellaneous Petitions are filed seeking transfer of M.C.No.35 of 2015, H.M.O.P.No.12 of 2015 and G.W.O.P.No.8 of 2015 on the file of the Family Court, Dindigul and transfer the same to Family Court at Madurai.

2. Since the issue involved in all these petitions are inter-connected to each other, they are taken up together and decided by a common order.

2.1. The short facts which are necessary for the disposal of all the three transfer civil miscellaneous petitions are summarised hereunder:-

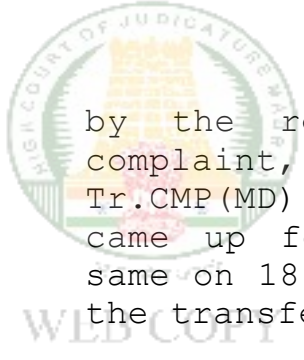
2.2. The petitioner would aver among other things almost setting out similar facts in all these transfer civil miscellaneous that that marriage between the petitioner and the respondent was solemnised on 07.11.2013 as per the Hindu rites and



rituals. The transfer civil miscellaneous petition No.577 of 2016 is filed by the petitioner to withdraw M.C.No.35 of 2015 filed by his wife on the file of the Family Court, Dindigul to the Family Court, Madurai. Similarly, his wife has also preferred H.M.O.P.No.12 of 2015 on the file of the Family Court, Dindigul, wherein, she has prayed to annul the marriage that took place between the petitioner and the respondent against which the petitioner has preferred Tr.C.M.P.No.578 of 2016. The petitioner has also filed G.W.O.P.No.8 of 2015 on the file of the Family Court, Dindigul seeking the custody of the child born between them for which the petitioner has preferred Tr.C.M.P.(MD).No.579 of 2016. Now, he wants all the three petitions to be transferred from the Family Court, Dindigul to the Family Court, Madurai.

2.3. It is the case of the petitioner, the respondent herein had already filed a Domestic Violence Original Petition seeking similar relief on the same set of facts before the Judicial Magistrate No.1, Dindigul in D.V.O.P.No.3 of 2015 and according to him, it is alleged that this case is filed as a counter blast to the case in G.W.O.P.No.8 of 2015 seeking custody of the minor child. The petitioner further alleges that the respondent had already filed a HMOP for divorce in H.M.O.P.No.12 of 2015 and the same is pending before the Family Court, Dindigul, on the ground of cruelty. However, it is the case of the petitioner that he has filed a claim in the said HMOP for restitution of conjugal rights. He further submits that at the instigation of his father-in-law, the respondent had preferred a dowry harassment criminal case in C.C.No.212 of 2015 before Judicial Magistrate No.2, Dindigul and Domestic Violence case in D.V.O.P.No.3 of 2015 before the Judicial Magistrate No.1, Dindigul. According to the petitioner, the respondent in one way or the other, prevented him from appearing in the Court. He also alleges that there is threat from the side of the respondent. In this regard, a First Information Report is pending in Thadikombu Police Station in Cr.No.253 of 2016 and the petitioner also filed petition for police protection before this Court in CrI.O.P.No.11223 of 2015. Therefore, he prays for appropriate orders.

3. A detailed counter affidavit has been filed almost setting out the similar facts on behalf of the respondent indicating the dowry harassment meted out by her even after giving birth to a male child born out of their wedlock on 12.10.2014. According to her, she struggled for survival with her tender year aged child and therefore, she filed M.C.No.35 of 2015 for maintenance and also filed H.M.O.P.No.12 of 2015 seeking divorce from the petitioner, who in turn, filed G.W.O.P.No.8 of 2015 seeking for the custody of the child in order to evade payment of maintenance to her and her child. According to her, when the petitioner lodged a false compliant against the respondent's brother and father, on enquiry, it was closed as 'mistake of fact'



by the respondent police therein. Based on the aforesaid complaint, the petitioner also preferred transfer application in Tr.CMP(MD).No.206 of 2015 before this Court and when the petition came up for hearing, the petitioner clandestinely withdrew the same on 18.04.2016. To sum up, she prays for the dismissal of all the transfer civil miscellaneous petitions.

4. The learned counsel for the petitioner submits that there is a threat to the petitioner life at the instigation of the respondent and her family members and therefore, he wants all the pending petitions from the Family Court, Dindigul to be transferred to the Family Court, Madurai. He further alleges that because of the threat, a criminal case came to be lodged against the respondent's father and brother and the same is pending. On this score, he prays for allowing all these transfer civil miscellaneous petitions.

5. *Per contra*, the learned counsel for the respondent submits that in one way or the other, the petitioner is making all out attempts to stultify and to scuttle the legal proceedings initiated against him. The suppression of vital facts including the previous transfer application in Tr.CMP(MD).No.206 of 2015 would alone speak in volume about the conduct of the petitioner. Hence, he prays for the dismissal of the transfer civil miscellaneous petitions.

6. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and carefully perused the materials available on record.

7. Perusal of the entire affidavit along with the supported documents will go to show that the petitioner originally filed transfer petition seeking withdrawal of H.M.O.P.No.12 of 2015 on the file of the Family Court, Dindigul and transfer the same to the Family court at Tiruchirappalli. But the criminal case filed by him against this petitioner has ended as mistake of fact. Therefore, immediately he withdrew the application in TR.CMP.No.206/2015. There is not even an iota of whisper about such petition in the form of averment in the present transfer civil miscellaneous petitions. Therefore, this Court is of the considered view that the petitioner has not come with clean hands to file these transfer civil miscellaneous petitions. That apart, a counter claim petition has been filed by the petitioner in M.C.No.35 of 2015 in Tr.CMP(MD).No.577 of 2016 wherein in the annexed typed set of papers at page No.10, at paragraph No.16, it is averred that this petition earns in H.C.L.Company around Rs.16,000/- only with a basic pay of Rs.13,718/-. But, at paragraph No.17, it is averred that he is having a personal loan <https://hcservices.evltrg.co.in/hcservices/> is paying Rs.17,876/- per month as EMI. The petitioner is duty bound to maintain his wife and the male child born to him. But, he has filed an evasive averment in the



affidavit that wife's father and her brother are earning to maintain them. A vague averment also has been made that the respondent is earning Rs.40,000/- per month without any supporting documents. His attitude in my considered opinion in making contrary statements and specific and evasive averment would go to show that his intention is only to harass the respondent. It is apt to mention an authoritative pronouncement of the judgment of the Apex Court reported in **2008 (9) SCC 353, Arti Rani @ Pinki Devi and another Vs. Dharmendra Comber Gupta**, to the effect that the convenience of the wife must be given preference in the matter of transfer petition. Further, respondent gave a birth to a male child on 12.10.2014. Now, the child is three years old. Being a woman with small baby, she cannot travel all the way from Dindigul to Madurai for every hearing. It will be very difficult for her to bring the child and back to Dindigul, after the hearing is over. Further, she has to depend on somebody to attend the Court hearing. Though, the petitioner alleges that criminal intimidation given by the respondent's father and brother and a criminal complaint made by him was dismissed as mistake of fact and he withdrew the transfer application filed by him. For all the foregoing reasons, in my considered opinion, this transfer petition has to be dismissed with cost.

(i) As earlier pointed out, the respondent maintains a three year old child. In the sky-rocketed prices of our country, it will be very difficult for the respondent to maintain a child without any means. The petitioner being a father has not denied that he works in the HCL Company. Though M.C.No.35 of 2015 was filed on the file of the Family Court, Dindigul, on 04.03.2015 and this petitioner choose to file a counter claim only on 31.03.2016 and subsequently, without disclosing Tr.C.M.P.No.206 of 2015 filed before this court, he managed to get stay on 19.01.2017. More than three years have gone by. In the case on hand, the husband holds a decent job and according to him, he pays EMI of Rs.17,876/-. Further, he has also filed GWOP seeking custody of the child. In the case of maintenance, this Court cannot be made as a tool to prolong the litigation for years together by suppressing material facts and therefore, to meet ends of justice and to provide interim relief to the three year child and her mother, this court directs the petitioner to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) to the respondent per month from the date of filing the transfer petition and he shall continue to pay till the maintenance case is disposed of by the Court below and a sum of Rs.20,000/- towards litigation expenses. The maintenance amount of Rs.5,000/- shall be paid within 5th of every English calendar month and the arrears shall be paid within six months from the date of receipt of a copy of this order.

<https://hcservices.courts.gov.in/hcservices/> which the respondent is at liberty to take appropriate action against the petitioner in the manner known



to law.

8. With the above direction, all the transfer miscellaneous petitions stand dismissed of and the Court below is directed to dispose of the M.C.No.35 of 2015, H.M.O.P.No.12 of 2015 and G.W.O.P.No.8 of 2015 on the file of the Family Court, Dindigul, as expeditiously as possible, preferably, the maintenance case within a period of six months from the date of receipt of a copy of this order without being influenced by any of the observations made hereunder. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Judge, Family Court, Dindigul.

+1cc to Mr.A.Jayaramachandran, Advocate in SR.No. 59152

bala/ssm/cm

AE/RSK/SAR1/17.05.2018/5P/3C

TR C.M.P(MD).Nos.577 to 579 of 2016
28.03.2018