



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.11.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (NPD) (MD)No.2622 of 2018
and
C.M.P. (MD)No.11485 of 2018

Lakshmi @ Mala

... Petitioner

Vs.

Ramamoorthy

... Respondent

PRAYER: Petition filed under section 115 of the Code of Civil Procedure, against the fair and decreetal order dated 09.10.2018 passed in Tr.O.P.No.20 of 2018, on the file of the Principal District Court, Madurai.

For Petitioner : Mr.T.Selvan
For Respondent : Mr.S.M.A.Jinnah

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Judge, Madurai, in Tr.O.P.No.20 of 2018, dated 09.10.2018, in and by which, the petitioner's request to transfer H.M.O.P.No.62 of 2014 from the file of II Additional Sub Court, Madurai, to any other Sub Courts came to be negatived.

2. The parties before this Court are couples and their marriage was solemnized on 22.11.1990. The respondent herein has filed H.M.O.P.No.62 of 2014 seeking divorce and according to the petitioner, during cross examination, when their Counsel asked questions as to the solemnization of second marriage and the income particulars of the respondent herein, the Presiding Officer stoutly opposed such questions and recorded evidence in favour of the respondent. Hence, apprehending that the Presiding Officer is acting in a biased manner, the petitioner has filed Transfer Original Petition before the Principal District Court, Madurai, seeking transfer of H.M.O.P.No.62 of 2014, but, without appreciating the facts, the learned Principal District Judge, Madurai, dismissed the petition. The grievance of the petitioner is that without considering the averments made by the petitioner, the impugned dismissal order came to be passed and therefore, the learned Counsel prays for allowing the present petition.

3. Learned Counsel appearing for the respondent, on the other hand, would submit that for the past twenty five years, they are living separately and the petitioner, instead of contesting the HMOP proceedings, is not appearing before the Court below, thereby, allowed the petition to set ex-parte twice. He would further submit



that there is no merit on the allegation of the petitioner and the learned Principal District Judge has rightly dismissed the Transfer Original Petition and therefore, he prays for dismissal of the present civil revision petition.

4. Heard the learned Counsel appearing on either side and perused the documents placed on record.

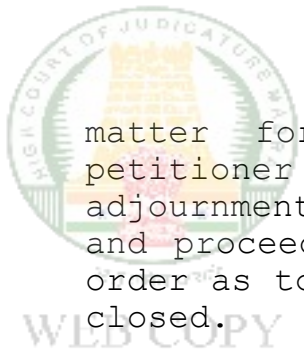
5. The petitioner herein is the wife of the respondent and the respondent has filed H.M.O.P.No.62 of 2014 before the III Additional Sub Court, Madurai, and later, the same was transferred to the file of II Additional Sub Court, Madurai. Perusal of record shows that when the matter was posted for cross examination of PW1, the petitioner herein remained absent and ultimately, set ex-parte for non-prosecution. Thereafter, when the matter was posted for examination of further PWs, the petitioner filed I.A.No.59 of 2018 on 02.01.2018, to set aside the ex-parte order. When this IA was posted on 01.02.2018, the petitioner did not give the notice of hearing to the respondent and therefore, it was subsequently adjourned. But, thereafter, the petitioner herself remained absent and thereby, I.A.No.59 of 2018 itself was dismissed.

6. Perusal of record shows that the petitioner, thereafter, filed I.A.No.99 of 2018 to set aside the ex-parte order passed in I.A.No.59 of 2018 and the learned II Additional Subordinate Judge, in the interest of justice, has allowed I.A.No.99 of 2018, thereby, I.A.No.59 of 2018 was restored, on condition that the petitioner shall cross examine PW1 on the next date of hearing, without seeking any adjournment. But, strangely, it is seen that the petitioner has levelled allegations against the Presiding Officer, who allowed her petition in the interest of justice.

7. The chain of events clearly shows that the petitioner is very much interested in harassing the respondent by keeping the proceedings pending. For about 25 years, the parties are living separately. Therefore, the attitude of the petitioner needs to be viewed seriously. There is absolutely no merit in the transfer petition filed by the petitioner and the same was rightly dismissed by the learned Principal District Judge.

8. This civil revision petition is liable to be dismissed and the same is accordingly, dismissed. At this juncture, it is represented by the learned Counsel for the petitioner that due to the pendency of transfer petition, they did not appear before the learned II Additional Subordinate Judge, who, in turn, has reserved the matter for judgment. Therefore, he prays for an opportunity to cross examine and put forth their contentions before the learned Judge.

9. Though the attitude of the petitioner does not cost for such an opportunity, this Court, in order to meet the ends of justice, is inclined to grant one more opportunity. Hence, the learned II Additional Subordinate Judge, Madurai, is directed to post the



matter for cross-examination. On the said hearing date, the petitioner shall cross examine the respondent, without seeking any adjournment, failing which, the learned Judge shall record the same and proceed further in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

/True Copy/

Sd/-
Assistant Registrar(T&P)

Sub Assistant Registrar(CS-III)

To

- 1.The Principal District Judge,
Madurai.
- 2.The II Additional Subordinate Judge,
Madurai.

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