

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.11 of 2019
and
C.M.P.No.486 of 2019

M.S.Bhavani

...Petitioner

versus

S.Rajesh Kannan

...Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw F.C.O.P.No.109 of 2017 pending on the file of the Family Court, Chengalpet and transfer the same to the file of the Principal Subordinate Court, Chengalpet.

For Petitioner : Mr.D.Kanaga Sundaram
for Mr.A.Prabhakaran

For Respondent : Mr.A.Velmurugan

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw the case i.e. F.C.O.P.No.109 of 2017 pending on the file of the Family Court, Chengalpet and transfer the same to the file of the Principal Subordinate Court, Chengalpet.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 09.09.2013 at D.V.Rani Mahal Thirumana Mandapam, Chengalpet, as per Hindu rites and customs. Due to the wedlock, the petitioner gave birth to one male child on 23.09.2015. After gave birth to male child, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents.

3. In the meanwhile, the respondent has filed a petition before the Family Court, Chengalpet, for the relief of annulling the marriage happened between them on 09.09.2013. The said petition is now pending before the Family Court, Chengalpet as F.C.O.P.No.109 of 2017. Apart from the above said proceedings, 2 more litigations are pending between the petitioner and respondent, in which, one is for visitation rights and another one is for maintenance. In the said circumstances, the petitioner has approached this Court by way of filing this present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. Today, when this petition is taken up for admission, the learned counsel appearing for the petitioner would contend that during the time of trial proceedings, the learned Judge, Family Court, Chengalpet, expressed his opinion in favour of the respondent, which shows that the learned Judge is having a prejudicial mind. He would further contend that only for the above reason, the petitioner has forced to file this petition for the relief as stated supra.

5. On the other hand, Mr.A.Velmurugan, learned counsel, who filed vakalat on behalf of the respondent would submit that while passing orders in C.M.A.No.1130 of 2018, the Hon'ble Division Bench of this Court on 19.09.2018 directed the Presiding Officer of the Family Court to dispose of the H.M.O.P.No.109 of 2017 on or before 28.02.2019. Further, he would contend that when the case is posted for cross-examination of P.W.1 on 17.09.2018, the petitioner herein is absent and she is not co-operating for complying with the order passed by this Court.

6. Now, on considering the submissions made by both sides, it is true that on 17.09.2018, when the case is posted for cross-examination of P.W.1, the petitioner is absent and subsequent to two hearings also, she is not present and thereafter, for the flimsy reasons, the case is repeatedly adjourned again and again.

7. The learned counsel for the petitioner in the trial Court mentioned in the month of December 2017 as the petitioner is going to file Tr.C.M.P. for the purpose for transferring the proceedings from the file of the Family Court to some other Court. The said attitude committed by the petitioner before the trial Court will clearly shows that she is not interested to proceed with the trial. Apart from that, the mere apprehension against the Court is not a ground for transferring the proceedings from one Court to another. As per the judgment of the Hon'ble Andhra Pradesh High Court in PASUPALA FAKRUDDIN vs. JAMIA MOSQUE reported in AIR 2003 ANDHRA PRADESH 448 in which, it has held as follows:

"12.....Unless there are specific instances of bias, unless the Presiding Officer has personal interest in the subject matter of the suits, he cannot be branded as a biased Officer. This would demoralize the Officers in the eye of the public and it becomes very difficult for such officers to work in a free and unbiased atmosphere. The mere apprehension of the petitioners on imaginary grounds cannot be accepted."

8. It is settled position the apprehension made towards the Court is not a sufficient ground for transferring the proceedings. Further, in view of the fact that already the Hon'ble Division Bench of this Court directed the Presiding Officer to dispose of the H.M.O.P.No.109 of 2017 in a stipulated period, the sole reason projected by the petitioner for allowing this petition is not having any merits.

9. In view of the above reasons, the Transfer Civil Miscellaneous Petition is liable to be dismissed and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

sri

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judge,
Family Court,
Chengalpet.

2.The Principal Subordinate Judge,
Chengalpet.

+1cc to Mr.A.Prabhakaran, Advocate, S.R.No.3538
+1cc to Mr.M.Suresh, Advocate, S.R.No.3342

Tr.C.M.P.No.11 of 2019
and
C.M.P.No.486 of 2019

kak (18/02/2019)