

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.119 of 2019

Kalpana

W/o Yoganathan @ Palanisamy

..Petitioner

-Vs-

Yoganathan @ Palanisamy

..Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the H.M.O.P.No.233 of 2018 pending before the Principal Sub Court, Mayiladuthurai and transfer the same to the Sub Court, Chidambaram.

For Petitioner :: Mr.T.Gobinath

For Respondent :: Mr.R.Shivakumar for
M/s K.M.Vijayan & Associates

ORDER

This Transfer Civil Miscellaneous Petition has been filed by Mrs.Kalpana, Wife of Yoganathan alias Palanisamy seeking to withdraw the H.M.O.P.No.233 of 2018 pending before the Principal Sub Court, Mayiladuthurai and transfer the same to the Sub Court, Chidambaram, on the ground that the petitioner is residing with her parents in Chidambaram along with her minor son Nithi Kavi, aged 7 years and minor daughter Kanishka, aged 4 years. The learned counsel for the petitioner also stated that the distance between Chidambaram and Mayiladuthurai is only about 60 Kms. As the petitioner has to appear along with her two minor children on every hearing, she had to undertake a long journey from Chidambaram to Mayiladuthurai by travelling about 60 Kms. Since the petitioner's parents are also aged and suffering from back pain and ill-health, she is facing difficulty to travel from Chidambaram to Mayiladuthurai on every hearing without any male support. Moreover, she is not able to travel from Mayiladuthurai to Chidambaram on a single day with her minor children. Therefore, no prejudice would be caused to the respondent if the pending H.M.O.P.No.233 of 2018 on the file of the Principal Sub Court, Mayiladuthurai is withdrawn and transferred to the file of the Sub Court, Chidambaram, so that

the matter can be either settled or disposed of on merits.

2. The learned counsel for the respondent sought time to take instructions, although he has entered appearance on behalf of the respondent on 26.3.2019 and till date, for the reasons best known to the respondent-husband, has not come forward to file the counter affidavit.

3. That shows that the respondent has no defence against the prayer for transfer of the pending H.M.O.P.No.233 of 2018 from the file of the Principal Sub Court, Mayiladuthurai to the Sub Court, Chidambaram. Therefore, taking note of the fact that the petitioner, being the wife of the respondent, is having two minor children, namely, Nithi Kavi, aged 7 years and Kanishka, aged 4 years and in the event of refusing the prayer of the petitioner, she would be unnecessarily constrained to undertake the travel from Chidambaram to Mayiladuthurai on every hearing along with the minor children, in the best interest of both the parents and also the welfare of the children, this Court is inclined to accede to the prayer of the petitioner. Accordingly, the H.M.O.P.No.233 of 2018 is withdrawn from the file of the Principal Sub Court, Mayiladuthurai and is transferred to the file of the Sub Court, Chidambaram for disposal. The learned Subordinate Judge, Chidambaram is hereby directed to take up the matter and dispose of the same on merits, preferably within a period of six months from the date of receipt of a copy of this order. The Transfer Civil Miscellaneous Petition is allowed. Consequently, C.M.P.No.4098 of 2019 is closed.

ss

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge
Principal Sub Court
Mayiladuthurai
2. The Subordinate Judge
Chidambaram

+1cc to Mr.T.Gobinath, Advocate, SR.No.45003
+1cc to Mr.K.M.Vijayan, Advocate, SR.No.44969

Tr.C.M.P.No.119 of 2019

Kak(11/07/2019)