

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.84 of 2019
and C.M.P. No.3038 of 2019

R.Suryakumar

... Petitioner

-vs-

S.Saranya

... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw the case in H.M.O.P. No.97 of 2017 pending on the file of the Sub Court, Kallakurichi and transfer the same to the Sub Court at Panruti or Virudachalam.

For Petitioner : Mr.R.Rajaramani

For Respondent : Mr.V.Gunasekar

O R D E R

The Transfer C.M.P. has been filed to transfer the H.M.O.P. No.97 of 2017 pending on the file of the Sub Court, Kallakurichi to the file of the Sub Court, Panruti or Virudachalam.

2.Learned counsel appearing for the petitioner would submit that after the marriage between the petitioner and the respondent took place on 23.01.2013 as per the Hindu customs and rites, a female child was born on 14.08.2014 and she is now 4½ years old. According to the learned counsel appearing for the petitioner, within few months of marriage, the respondent and her family members showed their true colour and started treating the petitioner discriminately by saying that she is from forward community and the petitioner belongs to backward community. As the petitioner was subjected to both mental and physical cruelty at the hands of the respondent and her family members, the petitioner has filed a divorce petition in H.M.O.P. No.97 of 2017 before the Sub Court, Kallakurichi under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act.

3.Learned counsel appearing for the petitioner would further submit that when the matter was taken up for hearing,

the learned Presiding Officer advised the petitioner husband to go for re-union that indicates that the learned Judge pre-judged his views in the divorce petition filed by the petitioner. Since the petitioner apprehends that he would not get fair justice before him, he has been advised to come to this Court.

4. But this Court is unable to find any merit in the transfer petition. When the petitioner husband married the respondent, after having love affair on the respondent on 23.01.2013 and they were blessed with a daughter aged about 4 ½ years, I do not find any error or infirmity on the part of the Presiding Officer to persuade the parties to go for re-union and the same does not mean that the learned Judge has prejudged his view. Therefore, the above ground on which the transfer C.M.P. filed before this Court seeking transfer is wholly unjustifiable and unacceptable. Prerogative powers are traditionally and historically invested with every organs of the State. The prerogative of the Parliament to declare the war is inherent in nature and immune from the judicial review and they are not answerable to the Court. Similarly, when the prerogative powers remained an important element to each organ of the State, the Courts are also invested with the same powers, hence, no judicial review is possible. In the present case, taking note of the cognizance of the fact that both the petitioner and the respondent got married and blessed with daughter aged about 4½ years, the Court below, using its prerogative and discretionary power, in the interest of the parties, advised them to accept the reunion. Therefore, such an advise given by the Court below using its prerogative powers cannot be questioned by the parties and thus, in my considered view, the petitioner ought not to have come to this Court challenging the same.

5. In fine, for wasting the precious time of the Court, Rs.25,000/- towards costs is imposed on the petitioner to be payable by him by way of demand draft in favour of the respondent for the welfare of the child and the compliance thereof shall be reported before the learned Presiding Officer, who shall verify as to the compliance of the order passed by this Court regarding the costs. Accordingly, the Tr.C.M.P. fails and the same is dismissed. No costs. Consequently, C.M.P. No.3038 of 2019 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

vga

To

The Sub Court, Kallakurichi

+1cc to Mr.R.Rajaramani, Advocate SR.No.61996

+1cc to Mr.V.Gunasekar, Advocate SR.No.61641

Tr. C.M.P. No.84 of 2019
and C.M.P. No.3038 of 2019

SKV(CO)
GMY(18/09/2019)