

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

T.R.C.M.P.No.126 of 2019
and C.M.P.No.4270 of 2019

K.Latha

... Petitioner/Respondent

-vs-

P.R.Saravanan

... Respondent/Petitioner

PRAYER: Petition is filed under Section 24 of Code of Civil Procedure to withdraw the case in H.M.O.P.No.37 of 2015 pending on the file of the Sub Court, Chidambaram and transfer thte same to Sub Court at Kumbakonam or Thiruvarur or Nagapattinam.

For Petitioner : Mr.R.Rajaramani

For Respondent : Mr.S.Balasubramanian

O R D E R

The present petition has been filed to transfer the case in H.M.O.P.No.37 of 2015 pending on the file of the Sub Court, Chidambaram to any of the Sub Court at Kumbakonam or Thiruvarur or Nagapattinam.

2. It is the case of the petitioner, who is a BSNL employee that she is the wife of the respondent herein and the husband is stated to be residing abroad. The marriage between the petitioner and the respondent took place on 05.11.2006 (though the date of marriage has been wrongly mentioned as 23.05.2011 in the petition, both parties have submitted that the date of marriage is 05.11.2006 only) and out of their wedlock, they were blessed with two children. It is the further case of the petitioner that due to the difference of opinion between them, a divorce petition was filed by the husband.

3. It is the main grievance of the petitioner that to attend the Court hearing, she is made to travel 100kms from her native place, as she has to appear in-person for every hearing along with her children and there is a threat to her life. It is stated that the petitioner had already obtained an interim order from this Court on 19.02.2019 for dispensing with her personal appearance and therefore, she needs to appear before the Court

as and when required. Likewise, since her husband is working abroad, both the petitioner and the respondents are to be necessarily represented by a counsel. Therefore, it is the submission of the petitioner that no prejudice would be caused to the respondent by transferring the case to anyone of the Sub-courts, such as Kumbakonam or Thiruvavarur or Nagapattinam, which is nearer to the residence of the petitioner.

4. The respondent has filed a counter affidavit, in which it is stated as follows:

i) His marriage with the petitioner herein took place on 05.11.2006 and he has filed a petition for divorce in the year 2015 on the ground of cruelty meted out at the hands of his wife;

ii) The evidence of the respondent has already been over; that the petitioner herein has also filed a proof affidavit and that the petition for divorce is posted for cross examination. The divorce petition was filed as early as in 2015 and the present petition filed by the petitioner is only to delay the conduct of cross examination;

iii) The submission made by the petitioner that she needs to travel from far off place to attend the hearing is not correct, as it was her own admission that her personal before the Court was already dispensed with by this Court and both the petitioner and the respondents are being represented by their respective counsel only. Therefore, it is prayed that the present petition is to be dismissed in limine.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is seen that the marriage of the petitioner / wife and the respondent / husband had taken place on 05.11.2006 and on account of conflict between the parties, a divorce petition was filed by the respondent on the ground of mental cruelty before the Sub Court, Chidambaram, which is now sought to be transferred to the Sub Court of either Kumbakonam or Thiruvavarur or Nagapattinam. The contention of the petitioner that she has two kids and finds it very difficult to undertake journey to a far off place, does not appear to be sound for the simple reason that the Court had already dispensed with the appearance of the petitioner. However, it is obligatory on the part of the petitioner to be present before the Court below at the time of cross examination, which cannot be conducted in absentia.

7. It is pertinent to state here that the divorce petition is of the year 2015 and nearly four years have gone by and the request for transfer of the case at this distant point of time will not serve any purpose, rather it will dilly dally the proceedings. The yet another submission made by the petitioner that she has two children and that travelling with children to

attend the Court hearings causes much hardship to her, cannot be accepted, as there is no necessity for her to attend the Court hearings along with her children, unless or until the Court directs the production of her children and moreover, in the considered opinion of this Court, it is better to keep children away from the Court atmosphere.

8. Be that as it may, since the matter is posted for cross examination of the petitioner, this Court is not inclined to adhere to the request of the petitioner in respect of the transfer of the case. Therefore, the Transfer Petition is dismissed. The Sub-Court, Chidambaram is directed to complete the process of cross examination of the petitioner at an early date and the cross examination shall be conducted either by the respondent or by the learned counsel for the respondent on the dates specifically posted for the said purpose, failing which, a cost of Rs.1000/- towards travel expenses shall be paid by the respondent to the petitioner. After completion of the cross examination, the Sub-Court, Chidambaram is directed to proceed with the case on day to-day basis without adjourning the case beyond 15 working days at any point of time and to bring the issue to a logical end at the earliest. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

The Sub Judge,
Chidambaram

+1cc to Mr.S.Balasubramanian, Advocate SR.101429

+1cc to Mr.V.R.AnnaGandhi, Advocate SR.101427

T.R.C.M.P.No.126 of 2019

VBA (CO)
CB(27/01/2020)