

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.157 of 2019
and C.M.P. No.5019 of 2019

S.Ramakrishnan

.. Petitioner

-vs-

M.Subashri

.. Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer H.M.O.P. No.28 of 2019 which is pending on the file of Sub Court, Kovilpatti pending disposal of the above Tr.CMP and to transfer the same to the Principal Family Court, Chennai.

For Petitioner : Mr.P.Solomon Francis

For Respondent : Mrs.Vijayakumari Natarajan

O R D E R

The Transfer C.M.P. has been filed to transfer the H.M.O.P. No.28 of 2019 pending on the file of the Sub Court, Kovilpatti to the file of the Principal Family Court, Chennai.

2.Learned counsel appearing for the petitioner, producing the photographs of the petitioner husband, showing that both the sole of the feet of the petitioner has been affected by diabetic problem, would submit that since both the legs were operated in March 2018, the petitioner was not even able to move by using his legs on his own. He would further submit that the petitioner husband was also suffered from 70% blindness. In view of his physical unfitness, it was highly impracticable to undertake long journey which is about 550 k.ms. from his residence. With these facts, the learned counsel for the petitioner placing before this Court an order of stay of operation of the pending H.M.O.P. No.28 of 2019 on the file of the Sub Court, Kovilpatti which was granted on 26.02.2019, would submit that the said factum of grant of stay was brought to the notice of the counsel for the respondent/wife, who appeared before the Sub Court, Kovilpatti, but the respondent wife has obtained an exparte order on 29.06.2019 concealing the above facts for getting the same and the matter was consequently posted for

exparte evidence on 10.07.2019. When this Court, considering the plight of the petitioner that he has underwent operation in both legs in March 2018 and he was also suffering from 70% blindness, has granted an order of stay, the respondent wife should not have proceeded the matter before the Sub Court, Kovilpatti and therefore, the petitioner is before this Court seeking transfer, so that the respondent wife, who is now serving in Chennai, can appear before the Principal Family Court, Chennai.

3.Opposing the above prayer, learned counsel appearing for the respondent would submit that the submission made by the learned counsel appearing for the petitioner that the respondent is presently serving in Chennai is incorrect as she has been working in Lucknow as Joint Commissioner of Income Tax and she has been put on deputation to serve in Lucknow. Therefore, it will be highly difficult to attend the Court at Chennai. She would further submit that when the petitioner has not proceeded with the divorce petition filed by the respondent on the file of the Sub Court, Kovilpatti, the petitioner was set exparte on 27.06.2019 and thereafter, for exparte evidence the case was posted on 10.07.2019. At this stage, it is not proper to transfer the pending H.M.O.P. No.28 of 2019 from the Sub Court, Kovilpatti to Principal Family Court, Chennai.

4.Despite an order of stay of operation of the pending H.M.O.P. No.28 of 2019 on the file of the Sub Court, Kovilpatti was granted by this Court on 26.02.2019, it is not known why the same was not brought to the notice of the Sub Court, Kovilpatti. Since the petitioner has not appeared before the Sub Court, Kovilpatti, it is fair on the part of the counsel for the respondent wife, who appeared before the Sub Court, Kovilpatti to apprise of the latest development of grant of stay by this Court before the said Court, but the same has not been done. Therefore, this Court, finding that the petitioner has undergone surgery in his both legs in March 2018 and he was also suffering from 70% blindness, is inclined to transfer the H.M.O.P. No.28 of 2019 to the file of the Principal Family Court, Chennai so that it will be convenient to both the parties for conducting the said H.M.O.P. No.28 of 2019. Accordingly, the Tr. C.M.P. is allowed and the H.M.O.P. No.28 of 2019 pending on the file of the Sub Court, Kovilpatti is withdrawn and transferred to the file of the Principal Family Court, Chennai.

5.The learned Principal Family Judge, Chennai is directed to take up the case and dispose of the same expeditiously in the manner known to law. Consequently, C.M.P. No.5019 of 2019 is closed. No costs.

6.It is submitted by the learned counsel appearing for the respondent that the respondent has been serving in Lucknow and

the frequent appearance before the Family Court, Chennai would cause some departmental problem to her and therefore she prays for dispensing with her appearance before the said Court.

7.This plea can be made before the learned Principal Family Judge, Chennai after the matter is transferred and in the date of hearing, if any such application is filed by the respondent wife seeking dispensing with her appearance, the same can be considered on merits by the Principal Family Court, Chennai.

vga

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Kovilpatti.

2.The Principal Judge,
Principal Family Court,
Chennai.

+lcc to Mr.P.Solomon Francis, Advocate, SR.No.68235
+lcc to Mr.Vijayakumari Natarajan, Advocate, SR.No.67397

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and C.M.P. No.5019 of 2017

Kak(24/09/2019)