

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 23.01.2019

JUDGMENT PRONOUNCED ON : 01.02.2019

CORAM:**THE HONOURABLE MR. JUSTICE R. PONGIAPPAN****Transfer CMP. No.763 of 2018****and C.M.P.No.18755 of 2018**

K.Vinothini

Petitioner

Vs

V.Karthikeyan

Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of the Civil Procedure to withdraw the H.M.O.P.No.104 of 2018, from the file of the Principal Subordinate Court, Cuddalore and to transfer the same to the Family Court at Vellore.

For Petitioner : Mr.B.Crist Das

For Respondent : Mr.N.R.Rajagopalan

ORDER

The petitioner is the respondent in H.M.O.P.No.104 of 2018 pending on the file of the Principal Subordinate Court, at Cuddalore. She has filed this application under Section 24 of Civil Procedure Code to withdraw H.M.O.P.No.104 of 2018 from the file of the Principal Subordinate Court, Cuddalore, and to transfer the same to the file of the Family Court, at Vellore.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was conducted on 12.02.2014, as per the Hindu rites and Customs. After the marriage, the petitioner was staying with the respondent at Cuddalore in the matrimonial home. Subsequently, due to the employment of the respondent, the matrimonial home was shifted to Chennai, and thereafter the petitioner gave birth to one girl child on 26.11.2014.

3. After gave birth to a girl child, due to the difference of opinion arose between the petitioner and the respondent, the petitioner left the matrimonial home and settled with her parents in Vellore. In the mean time, for the extraneous factors the respondent approaches to the Principal Subordinate Court, Cuddalore, and filed an application under Section 13(1) (i-a) of Hindu Marriage Act, 1995, for the relief of annulling the marriage happened between the petitioner and the respondent. As of now, the said application has been pending with the Principal Subordinate Court, Cuddalore, in H.M.O.P.No.104 of 2018.

4. In the said circumstances, the petitioner has approached this Court by way of filing this application for the reason stated in the paragraph No.1 of this order.

5. According to the petitioner, her female child is aged about 3 ½ years and studying at Vellore. More over, she is not having any independent income for protecting her child and for her day to day needs and she is depending upon her parents even for litigation expenses.

6. Per contra, the learned counsel appearing for the respondent, denied the allegation leveled by the petitioner against the respondent by saying the petitioner herself voluntarily left the matrimonial home and thereafter, she is refused to join with him. It is the contention of the respondent that this application has been filed only for harassing the respondent. Since, the respondent being a only son to his parents, and he attend the Court proceedings at Vellore, is very difficult for him and he prayed to dismiss the petition.

7. Apart from that, by stating the judgment of our Honourable Apex Court reported in **(2006) 9 SCC 197**, learned counsel appearing for the respondent argued that the respondent is ready to pay the travelling expenses to be borne by the petitioner and prayed for dismissing the petition.

8. On considering the submissions made by on either side, it is apparent that the distance between Cuddalore and Vellore is only about 150 Kms. Further it is an admitted fact that the petitioner is having a school going aged about 3 ½ years old.

9. Even though, the respondent is willing to pay the travelling expenses, it is very difficult task for the petitioner to attend the Court proceeding at Cuddalore along with her child after travelling 150 kms., from Vellore. If this application is not allowed, the petitioner may face much difficulties in attending the Court proceedings at Cuddalore.

10. It is relevant to see the Judgments of our Honourble Apex Court reported in **2008 (9) SCC 353 [arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta]** and **AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]**. In the said Judgments it was held that the convenience of the wife must be given preference for deciding these type of applications. Also, considering the facts and circumstances of the case, it is apparent that the residence of the petitioner is near by Vellore, and she is not having any independent income. Further, being a male member it is not difficult for the respondent to attend the Court proceedings at Vellore.

11. In the light of the above discussions, the Transfer Civil Miscellaneous Petition is allowed and the case in H.M.O.P.No.104 of 2018 is ordered to be withdrawn from the file of the Subordinate Court, Cuddalore, and to transfer the same to the file of the Family Court, Vellore. The learned Subordinate Judge, Cuddalore, is directed to transmit all the records pertaining to H.M.O.P.No.104 of 2018 to the file of the Family Court, Vellore, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the learned Judge, Family Court, Vellore, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sbn
Index : Yes/No.

01.02.2019

To

1. The Subordinate Court, Cuddalore.
2. The Family Court, Vellore.

WEB COPY

R. PONGIAPPAN.J

sbn



**Pre Delivery Order in
Transfer CMP. No.763 of 2018
and C.M.P.No.18755 of 2018**

WEB COPY

Date: 01.02.2019