

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.291 of 2019
and
C.M.P.No.8469 of 2019

K.Amsaveni

... Petitioner

Vs.

A.Nallasivan

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw F.C.O.P.No.124 of 2018, on the file of the Family Court, Erode and transfer the same to Principal Sub Court, Tiruppur.

For Petitioner : Mr.S.W.Camyles Gandhi

For Respondent : Mr.C.E.Pratap

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner to withdraw F.C.O.P.No.124 of 2018, on the file of the Family Court, Erode and transfer the same to Principal Sub Court, Tiruppur.

2.The case of the petitioner is that she got married to the respondent on 27.08.2015 at Thindal Velayudhasamy Koil, Erode. It is the further case of the petitioner that within few days of their marriage, the respondent and his mother started ill treating her and that only after their marriage, the petitioner came to know about the huge age difference between her and the respondent. Further that, despite knowing the age difference, she continued to live with the respondent and they were blessed with one female child, namely, Paranya. Later on, the respondent had started quarrelling with her for unnecessary reasons and the petitioner came to know that the respondent was alcoholic and further he subjected her to physical cruelty.

3.Thereafter, the respondent had driven her out of the marital home and retained the child with him. Due to which, the

petitioner had lodged a complaint with the Erode Police Station on 07.03.2018. But, unfortunately, the petitioner herein was forced to leave the child with the Respondent and the said complaint was closed on 08.03.2018 due to the influence of the Respondent herein. Thereafter, the respondent herein had filed F.C.O.P.No.124 of 2018 before the Family Court, Erode for restitution of conjugal rights.

4.The respondent/husband has filed a counter affidavit stating that all the averments and allegations contained in the petition as false, frivolous and that he had never been in the habit of drinking and that he has not caused any cruelty to the petitioner. Further that, pursuant to lodging of the complaint dated 07.03.2018, the petitioner herein appeared before the Inspector of Police, All Women Police Station, Erode and gave a statement in writing on 08.03.2018 that she do not want to take the child Paranya with her and hence, the respondent has been taking care of the child till date.

5.It is further averred in the counter affidavit that since the petitioner left to her parents House at Krishnagiri, having left with no other option, the respondent had filed a petition under Section 9 of Hindu Marriage Act, 1955 in F.C.O.P.No.124 of 2018 on the file of the Family Court, Erode seeking for restitution of conjugal rights on 23.03.2018. Further, the respondent had also deposited a sum of Rs.10,000/- (Rupees Ten Thousand only) in favour of the petitioner for her travelling expenses before the Court below. However, the petitioner herein upon receipt of the notice from the Family Court, Erode did not turn up for the hearing and remained absent. Therefore, the petitioner was set ex parte on 14.09.2018. Thereafter, the petitioner herein filed a petition to set aside the ex parte decree on 01.10.2018. In the mean while, the petitioner has approached this Court and filled this Transfer Civil Miscellaneous Petition, suppressing all the material facts.

6.The learned counsel for the petitioner submitted that the petitioner is residing at Valiplayam, Tirupur and it takes nearly 2 hrs to travel to Erode from Tirupur to attend the Court proceedings and that she cannot afford to appoint a local advocate to represent her case and that she is not able to defend her case in a proper manner. Therefore, the petitioner prays to withdraw F.C.O.P.No.124 of 2018 on the file of the Family Court, Erode and transfer the same to Principal Sub Court, Tirupur.

7.The learned counsel for the respondent submitted that there is no such petition pending before the Family Court, Erode since an ex-parte decree was passed on 14.09.2018. Unless the said ex-parte decree is set aside, there is no cause of action

for the wife to seek transfer of F.C.O.P.No.124 of 2018, pending before the Family Court, Erode to Principal Sub Court, Tiruppur. Moreover, bus facilities are available for the wife to travel to the Court. Further, the husband has to take care of the child, who is residing with him and also his age old parents.

8.In view of the above circumstances, this Court is of the view that there is no material produced by the wife to show that she has got any difficulty in travelling to Erode to attend the Court proceedings. In case, if the wife is not having any means to appoint an advocate, she can seek the aid of the Tamil Nadu State Legal Services Authority at Erode and can get necessary assistance. Further, the petitioner can file appropriate petition to avail the money deposited by the respondent/husband before the lower Court for her travel expenses. Therefore, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Judge, Family Court, Erode
- 2.The Principal Subordinate Judge, Tiruppur

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr. Pratap, Advocate sr 81296.

TR.C.M.P.No.291 of 2019
and
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MG(CO)
SP(25/11/2019)