

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 21.08.2019

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.347 of 2019
and C.M.P. No.9992 of 2019

Christina Manoharan

... Petitioner

-vs-

Kinsley Jabakumar

... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw O.P. No.101 of 2019 pending on the file of Family Court at Trichy and transfer the same to the file of Family Court at Chennai.

For Petitioner : Ms.Jayashree Narasimhan

For Respondent : Mr.S.Udayakumar

O R D E R

The Transfer C.M.P. has been filed to transfer the I.D.O.P. No.101 of 2019 pending on the file of the Family Court at Trichy to the file of the Family Court at Chennai.

2.Ms.Jayashree Narasimhan, learned counsel appearing for the petitioner would submit that the marriage between the petitioner and the respondent was solemnised on 27.06.2013 at C.S.I. All Saints Church, Puthur, Trichy - 17 as per Christians customs and rites. After the marriage, the respondent, who was an Engineer, took the petitioner to U.S.A., where he was working and they were blessed with a female child, namely Amy, on 13.05.2014 in the U.S.A. Due to some misunderstanding cropped up between them, they came down to India in July 2015 and since then the petitioner has been living with her parents. Consequently, when the bitterness widened, the petitioner filed a complaint against the respondent before the Tamil Nadu Chief Minister's Special Complaint Cell and the respondent was enquired by Trichy Fort All Women Police Station. During March 2016, the petitioner has filed a second complaint against the respondent and his parents before the said Cell. As the respondent's mother was working in Employees Provident Fund Organisation (EPFO), a complaint was also sent to respondent's mother's office. Thereafter, on 24.01.2017, the petitioner filed

third complaint against the respondent, his parents and sister alleging dowry allegations before the office of the Commissioner of Police, Trichy. In view of the subsequent developments in the matrimonial life, the respondent filed I.D.O.P. No.101 of 2019 denying all the allegations and to pass a decree for divorce dissolving the marriage held on 27.06.2013 before the Family Court, Tiruchirappalli. On receipt of the notice, the petitioner wife has come to this Court seeking transfer of the I.D.O.P. No.101 of 2019 from the file of the Family Court, Tiruchirappalli to the file of the Family Court, Chennai on the ground that she has been residing in Chennai along with her child. Moreover, the petitioner has been employed recently as a Teacher in Anita Methodist Matriculation Higher Secondary School, Veperiy, Chennai.

3.Mr.S.Udayakumar, learned counsel appearing for the respondent would submit that the respondent may be permitted to have the temporary custody of the child for three days. In this regard, the respondent has filed an affidavit stating that on the earlier occasions when the matter was listed in the Chamber on 16.07.2019 and 05.08.2019, he was permitted to spend some time with his daughter aged 4½ years and she was very comfortable with him and he was also very happy to see his daughter after a long time. It is further stated in the affidavit that as the petitioner refused to accept the re-union, he has planned to reach U.S.A. on 08.09.2019. Since he intends to spend some more time with his daughter, he sought permission to have the custody of the child for three days namely, 24.08.2019/25.08.2019, 31.08.2019 and 07.09.2019. The affidavit further states that his family members are also very anxious to see his child, hence, after showing the child to them, he has undertaken to return the child to the petitioner on 25.08.2019 evening. It is further stated that since his Periamma Mary, aged about 65 years is also very anxious to see his child, he sought permission to take his child to Trichy. Unless permission is granted for the aforementioned reasons, he may not be able to enjoy those days with his family members.

4.Learned counsel appearing for the petitioner, opposing the above request made by the respondent, would submit that the respondent cannot seek custody of the child in the guise of visitation rights. Although the respondent, being a father and a natural guardian, is entitled to have the visitation right, he cannot seek for custody of the child as he has to approach the appropriate forum seeking such reliefs. Learned counsel appearing for the petitioner would further submit that it may not be possible to the petitioner to be with the child on Saturdays as she has joined recently in the above said School.

5.Learned counsel appearing for the respondent stated that if the respondent visits the child on Saturdays, would cause any hindrance to the petitioner, Sundays can be fixed and the respondent may be allowed to see the child namely, on 25.08.2019, 01.09.2019 and 08.09.2019 and the child would be handed over to the petitioner in ITC Grand Chola Hotel, Guindy, Chennai-32 (9500017747) at 04.00 p.m. on every Sundays.

6.Learned counsel appearing for the petitioner would submit that the respondent can come to CSI Missionary Chapel, Mookathal Street, Purasawalkam, Chennai-7 and pick up the child at 10.00 a.m. from the petitioner and her mother and all three of them would visit I.T.C. Grand Chola Hotel and the respondent can be with the child till 04.00 p.m. and at 04.00 p.m. they will take back the child from the respondent.

7.This Court, finding that the parties would be given a chance for re-union, listed the matter before the Chamber on two hearings namely, 16.07.2019 and 05.08.2019. In the first hearing, only the petitioner and her parents have appeared and expressed that the respondent also could appear, therefore, the learned counsel appearing for the respondent communicated the same to the respondent. Subsequently, on the second hearing namely, 05.08.2019 the respondent came down from U.S.A. and expressed his willingness to accept re-union. After a long discussion, both the petitioner and her mother refused to accept the offer of re-union citing certain reasons. Therefore, the matter was listed before this Court.

8.As a matter of fact it may be mentioned herein that the respondent has come from U.S.A. under H1-B visa, sponsored by his employer, with a short visit to go back to U.S.A. with the offer of reunion and the same was refused by the petitioner's side, hence the respondent filed an affidavit seeking temporary custody of the child citing a reason that filing any petition would complicate the issue as he has to go back to U.S.A. soon.

9.Since the respondent has come down from U.S.A. with the offer of reunion and the same was refused by the petitioner's side, his request to have the visitation rights cannot be turned down by this Court. This Court, in similar circumstances, while entertaining the Tr.C.M.P. No.435 of 2015 dated 05.08.2016 reported in 2016 (7) MLJ 54, exercising its discretion, has granted divorce. The relevant paragraphs are given as under:

27. The Apex Court in Baby v. Travancore Devasvom Board and other reported in 1998(8) SCC 310, held that the power of the High Court under Constitution of

India is always in addition to the power of Revision given under Section 103 of the Kerala Land Reforms Act. Similarly, the power conferred upon Article 226/227 of the Constitution of India is in addition to Section 24 of the Code of Civil Procedure. In Union of India and another v. Kriloskar Pneumatic Co. Ltd., reported in 1996 (4) SCC 453, the Apex Court held that the power conferred under Article 226/227 of the Constitution of India is designed to effectuate law. Therefore, this Court, invoking Article 227 of the Constitution of India withdraws H.M.O.P.No.158 of 2015 on the file of the Family Court, XXXXXX and F.C.O.P.No.1922/2015 filed by the respondent on the file of XXX XXXXXXXXXXXX Family Court, XXXXXXXX to the file of this Court to decide the main issue involved in the proceedings initiated by the parties only with an intention to render speedy justice to them.

...

29. Prolonging the divorce proceedings or not relieving the petitioner, from the clutches of the so-called holy bond of marriage, would be sheer injustice meted out to the poor lady, who, with fond hopes and colourful dreams, would have stepped into the marriage hall, only to get shocked terribly and shattered by the disease being suffered by the respondent. No amount of consolation, either by money or otherwise, could compensate the agony and pain undergone, both psychologically and physiologically, by the petitioner.

Hence, invoking Article 227 of the Constitution of India and Section 151 of the C.P.C. by withdrawing the original proceedings pending before the Family Courts, this Court has to grant decree of nullity of marriage dated 13.11.2014 as prayed for under Section 12(1)(c) of the Hindu Marriage Act, 1955 in H.M.O.P.No.158 of 2015 filed by the petitioner and for the same reasons, the respondent's petition under Section 9 of the Act seeking restitution of conjugal rights in F.C.O.P.No.1922 of 2015 has to be dismissed. Assuming for a moment that the decree of nullity can not be granted under Section 12 (1) (c) of the Hindu Marriage Act, for the reasons stated in para 28 of this Order, divorce, under Section 13 (1) (ia) of the Hindu Marriage Act on the ground of cruelty has to be granted alternatively.

10. Instead of driving the parties to face multiplicity of proceedings that would cause unnecessary litigations in various Courts, since the respondent is agreed to have the visitation rights in the aforementioned days, to which he is entitled, this Court, permits him to have the visitation rights in the

following three Sundays namely, 25.08.2019, 01.09.2019 and 08.09.2019. The respondent can pick up the child from the CSI Missionary Chapel, Mookathal Street, Purasawalkam, Chennai-7 at 10.00 a.m. with the aid of Ms.Jayashree Narasimhan, learned counsel appearing for the petitioner (98413 42271) and make the child available with him till 04.00 p.m. and the respondent shall hand over the child to the petitioner. Needless to say that the mother and grandma of the child shall be taken care of by providing lunch and other refreshments by the respondent. If need be, liberty is given to both parties to mention before this Court.

11.Since the learned counsel appearing for the respondent has no objection in allowing this petition, the Tr.C.M.P. stands allowed. Accordingly, the Tr. C.M.P. is allowed and the O.P. No.101 of 2019 pending on the file of the Family Court, Trichy is withdrawn and transferred to the file of the Family Court, Chennai. The learned Family Judge, Chennai is directed to take up the case and dispose of the same expeditiously in the manner known to law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Judge,
Family Court, Trichy.

2.The Judge,
Family Court, Chennai.

+1cc to Mr.Jayashree.N., Advocate, S.R.No.71468

+2ccs to Mr.S.Udayakumar, Advocate, S.R.No.70696, 71412

Tr. C.M.P. No.347 of 2019
and C.M.P. No.9992 of 2019

SJ(CO)

RRS(22/08/2019)