

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.RAJA

Tr.C.M.P.Nos.349, 350 and 352 of 2019

S.SunilKanth @ Vishal ... Petitioner in all these petitions

Vs.

Keerthika ... Respondent in all these petitions

Common Prayer:- Petitions have been filed under Section 24 of C.P.C., praying to withdraw the pending cases in H.M.O.P.No.878 of 2018, G.W.O.P.No.242 of 2019 and H.M.O.P.No.371 of 2019, on the file of the Family Court, Madurai, and to transfer the same to the file of the Family Court, Chennai.

सत्यमेव जयते

For Petitioner : Mr.D.Ferdinand

For Respondent : Mr.R.Damodharan

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COMMON ORDER

The present Transfer Civil Miscellaneous Petition are filed to withdraw H.M.O.P.No.878 of 2018, G.W.O.P.No.242 of 2019 and H.M.O.P.No.371 of 2019, pending on the file of the learned Family Court, Madurai, and to transfer the same to the file of the learned Family Court, Chennai.

2. The petitioner is the husband and the respondent is the wife. H.M.O.P.No.878 of 2018 was filed by the respondent/wife seeking restitution of conjugal rights. H.M.O.P.No.371 of 2019 was filed by the petitioner/husband seeking for dissolution of marriage. G.W.O.P.No.242 of 2019 was filed by the respondent/wife seeking custody of the minor child.

3. Heard the learned counsel appearing on either side.

4. It is averred in the affidavit filed in support of these petitions that the marriage between the petitioner and the respondent was solemnized on 20.02.2013 as per the Hindus' Customs and Rites and out of the said wedlock, they were blessed with a baby girl on 17.12.2013. While so, on 23.12.2017, she had left the matrimonial home and she had even refused to take the minor child and since then, the minor child was in the custody of the petitioner/husband till

03.04.2019. Since the respondent/wife has not even taken any effort atleast to see the minor child, the petitioner/husband filed H.M.O.P.No.2876 of 2018 on the file of II Additional Family Court, Chennai, seeking divorce. Thereafter, as a counterblast, the respondent/wife filed H.M.O.P.No.878 of 2018 before the Family Court, Madurai, seeking restitution of conjugal rights. Whiles, the respondent/wife filed Tr.C.M.P.No.420 of 2018 seeking to transfer the case filed by the husband, whereby, the Hon'ble Madurai Bench of this Court, vide its order dated 07.01.2019, ordered for transfer of the case filed by the husband to the file of the learned Family Court, Madurai, to be tried along with the case filed by her.

5. It is further averred that on 26.03.2019, the petitioner/husband received a call from All Women's Police Station, Villivakkam, Chennai, whereby, he was directed to appear before the Police Station with minor child in view of the complaint said to have been lodged by the respondent/wife. Thereafter, the petitioner/husband appeared before the said police station and intimated about the proceedings pending before the Court and accepting the said explanation given by him, the complaint was closed. Whiles, on 03.04.2019, the respondent/wife with the help of certain goondas has forcibly taken away the minor child after assaulting the petitioner's parents.

6. In view of the aforesaid facts and circumstances of the case, the petitioner/husband filed O.A.Nos.362 and 363 of 2019 and A.No.2696 of 2019 seeking a direction to the respondent/wife to produce the minor child before the Court. This Court, vide interim order dated 04.04.2019, directed the respondent/wife to produce the child before the Court, but, despite the order of this Court, she did not produce the child. Finally, this Court, vide its order dated 22.04.2019, directed the Commissioner of Police, Madurai, to produce the respondent/wife and the minor child before the Court. Accordingly, when the matter was taken up on 24.04.2019, the respondent/wife and the minor child were present and this Court, upon satisfying the facts and circumstances of the case, handed over the custody of the child to the petitioner/husband.

7. Subsequent to the above developments, now, the respondent/wife has filed G.W.O.P.No.242 of 2019 before the learned Family Court, Madurai, seeking custody of minor child.

8. It is submitted by the learned counsel for the petitioner/husband

that in view of unruly behavior and conduct of the respondent/wife, it is not safe for the petitioner/husband and his minor child to attend each and every hearing before the learned Family Court, Madurai, as the respondent/wife is very highly influential and there is every possibility of her indulging in illegal activities putting the life of the petitioner under threat. Therefore, he prayed for a direction to transfer all the three cases pending before the learned Family Court, Madurai, to the file of the learned Family Court, Chennai.

9. Learned counsel appearing for the respondent/wife submitted that earlier the petitioner/husband filed Tr.C.M.P.No.790 of 2018 seeking to transfer the case filed by the respondent/wife from the file of the learned Family Court, Madurai, to the file of the learned Family Court, Chennai. This Court, vide its order dated 09.01.2019, taking note of the fact that the case filed by the petitioner/husband has already been transferred to the file of the learned Family Court, Madurai, disposed of his petition as nothing survives.

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10. Learned counsel for the petitioner/husband submitted that after the transfer of the above said case, many untoward incidents have been taken place and now, the life of the petitioner/husband is under threat. Besides, the

respondent/wife, by assaulting the petitioner's parents, has taken away the minor child and thereafter, only in view of the order passed by Court as stated above, the minor child is in custody with the petitioner/husband, hence, it will be difficult for the petitioner/husband to attend each and every hearing from Chennai to Madurai.

11. Given the facts and circumstances of the case, it is relevant to see the case already filed by the petitioner/husband before this Court in A.No.2696 of 2019 seeking a direction to produce the child before the Court. For better appreciation, paragraphs Nos.8 to 12 of the order passed by this Court in O.A.Nos.362 and 363 of 2019 and A.No.2696 of 2019, dated 24.04.2019, are extracted below:-

8. I was forced to reject the contention of Mr.Sankarasubbu mainly on the ground that wife /respondent herself has not taken such a stand in any of the proceedings launched by her and in fact, she had sought for restitution of conjugal rights. In the application filed before the Family Court, she had given her age as 23 in the year 2018. Therefore, there was a possibility of her having completed 18 years of age on the date of the marriage.

9. Mr.D.Ferdinand, learned counsel

appearing for the husband would however contend that neither the husband nor his parents were aware of the fact that the wife has not completed 18 years of age at the time of marriage, since it was an arranged marriage. Mr.D.Ferdinand,learned counsel would submit that even in the complaint before the Police, the respondent wife has stated that marriage took place with the consent of the parents of both the spouses.

10. Upon my direction issued on 22.04.2019, the child and the mother were procured and they were produced before me today. I had interacted with the child. The child seems to be in a position to comprehend what is happening around her. She would however, state that she would stay with the father and visit the mother when the School is closed for holidays. The child is 5 years old. I find that the child very mature and she is able to discern things and comprehend, as to what is happening around her.

11. As already stated, the respondent wife had given a specific undertaking to the Police at the time of enquiry that she will take legal steps to obtain custody of the child. But without prosecuting the proceedings that already been initiated by her for custody of the child, the respondent wife had taken recourse to violence and had snatched the child from the custody of the father by using force. This attitude, in my considered

opinion, cannot be countenanced. Even after specific orders of this Court, the respondent did not produce the child before this Court. Despite the undertaking given by the counsel, the respondent/wife, attempted to browbeat this Court and avoid production of the child before of this Court.

12. The conduct of the wife particularly, the fact that she remained quiet for more than a year, after her child was taken away from her and chose to take the recourse of violence to snatch the child from the husband leaves no doubt in me that the welfare of the child will not be safe in her custody. Hence, the interim custody of the child is handed over to the father. The father/petitioner is directed to take the child with him right from my chamber."

12. A mere reading of the above order passed by this Court would depict the attitude and conduct of the respondent/wife that even after specific direction issued by this Court to produce the child, she has avoided to produce the child before this Court. Secondly, taking law in her own hands, she has also snatched away the child from her husband by using force. Thereafter, the interim custody of the child was handed over to the father/petitioner herein.

13. In the light of the above background, I am of the considered view that the petitioner/husband may not be safe if he visits Madurai to conduct pending cases. Therefore, H.M.O.P.No.878 of 2018, G.W.O.P.No.242 of 2019 and H.M.O.P.No.371 of 2019 are withdrawn from the file of the learned Family Court, Madurai, and consequently, transferred the same to the file of the learned Family Court, Chennai. On such transfer, the learned Family Court, Chennai, shall dispose of all the cases together in the manner known to law as expeditiously as possible.

14. With the above directions, the present Transfer Civil Miscellaneous Petitions are allowed. Consequently, connected civil miscellaneous petitions are closed.

26.06.2019

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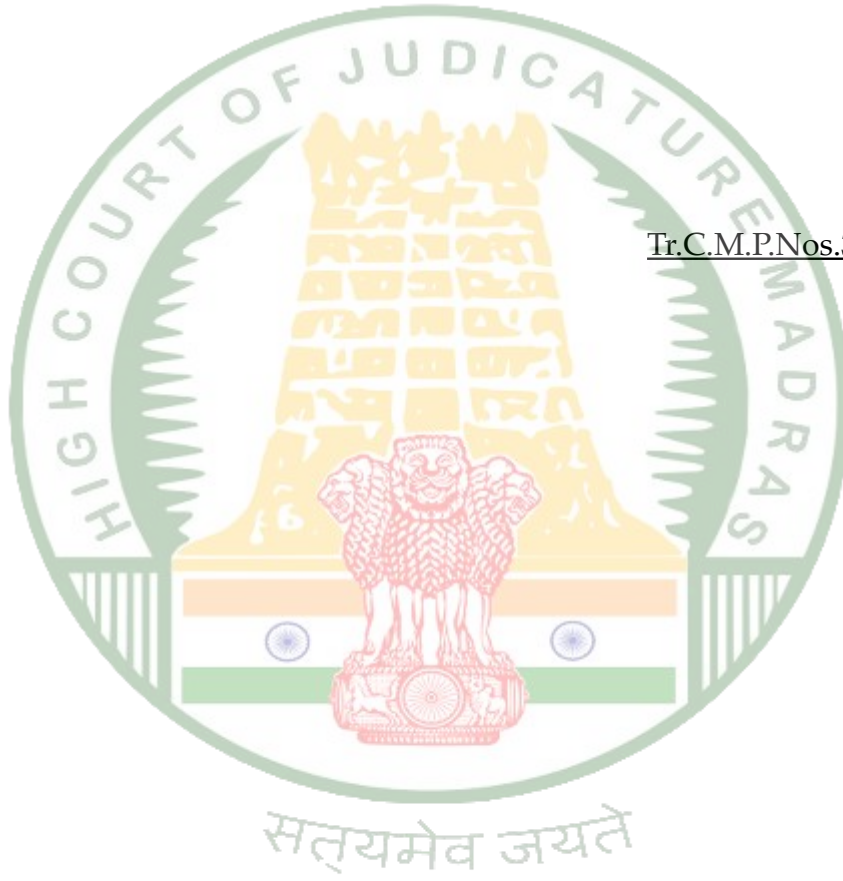
1.Family Court, Madurai.

2.Family Court, Chennai.

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T.RAJA, J.

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