

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.209 of 2018 and
C.M.P.No.5363 of 2018

R.Radhika

... Petitioner

Vs.

S.Kalimuthu

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to transfer the H.M.O.P.No.69 of 2017 pending on the file of Subordinate Court, Devakottai to the Family Court, Chennai.

For Petitioner : Mr.S.Lingesh

For Respondent : No Appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to transfer the H.M.O.P.No.69 of 2017 pending on the file of Subordinate Court, Devakottai to the Family Court, Chennai.

2. The petitioner is the wife and the respondent is the husband. The case of the petitioner is that the marriage between her and the respondent was solemnized on 08.02.2013, in accordance with Hindu Rites and Customs and the marriage was an arranged marriage. From the date of marriage, the respondent was harassing the petitioner by demanding dowry, conducting inhuman activities and by threatening with dire consequences. Due to which, the petitioner has lodged a complaint in All Women Police Station, Mylapore against the respondent and his family members on 19.07.2015. Further, a complaint was also lodged under Domestic Violence Act before the Protection Officer, Social Welfare Department, Chennai on 23.08.2015 and a Domestic Violence Petition was also filed before the XXIII Metropolitan Magistrate Court, Saidapet Chennai in M.C.No.86 of 2015. The respondent is working in kuwait and earning a sum of Rs.1,00,000/- and he did not evince any interest to pay any

amount towards maintenance to the petitioner, hence, the petitioner has filed a Maintenance Case before the learned Vth Additional Family Court, Chennai in M.C.No.511 of 2017. In order to escape from these petitions, the respondent has filed a petition for divorce with false allegations in H.M.O.P.No.69 of 2017 before the learned Sub Judge, Devakottai.

3. The averment of the respondent in H.M.O.P.No.69 of 2017 is that the petitioner has left him and residing and living with a person, who is supposed to be younger brother in relation, which had caused mental agony and as an added insult, the villagers are not showing any interest to interfere in his affair because the wife has refused to come back.

4. The case of the respondent is that the petitioner is residing with a person, who is said to be a younger brother in relation and thereby caused great insult and mental agony to him and lost his respect before the village people. Therefore, he has filed a petition seeking divorce.

5. The learned counsel for the petitioner would submit that the petitioner is depending on her aged parents and due to financial constraints, she cannot travel to Devakottai for each and everything, therefore, seeks to transfer the said H.M.O.P.No.69 of 2017 pending on the file of Sub Court, Devakottai to the Family Court, Chennai.

6. On earlier occasion, viz., on 17.09.2019, it was brought to the knowledge of this Court that private notice, which was sent to the respondent, was returned as 'left India - return to Sender' and the case which is pending before the Sub Court, Devakottai was defended by some other counsel. The respondent often visits the house, but evades to receive the notices issued by the Court. Therefore, this Court had directed the learned counsel for the petitioner to serve the notice on the counsel as well as the last known address of the respondent. In consequence, the respondent was served on 09.10.2019 through Mr.C.Arumugam, learned counsel, who appears in H.M.O.P.69 of 2017 pending on the file of Sub Court, Devakottai. However, today, there is no appearance either in-person or through learned counsel and no vakalat has been filed on behalf of respondent.

7. Heard the learned counsel for the petitioner.

8. It is well settled law that whenever, the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by the Hon'ble Supreme Court in the Judgments 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].

9. Considering the facts and circumstances of the case and taking into account the Judgments of the Hon'ble Supreme Court, as cited supra, coupled with the fact that the petitioner is facing financial difficulties to attend the Sub Court, Devakottai and is depending only on her aged parents, in the interest of justice, this Court is inclined to allow this petition. Accordingly, the H.M.O.P.No.69 of 2017 pending on the file of Subordinate Court, Devakottai is withdrawn and transferred to the Family Court, Chennai.

With the above observation, the present Transfer Civil Miscellaneous Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ssd
To

1. The Subordinate Judge, Devakottai
- 2.The Judge, Family Court, Chennai.

+1 CC to Mr.S.Lingesh, Advocate sr 90844.

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MP(CO)
SP(06/12/2019)