

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr. C.M.P. No.572 of 2019
and C.M.P. No.16219 of 2019

Devapriya

... Petitioner/Respondent

-vs-

V.Roshan Philip

... Respondent/Petitioner

Prayer: Petition filed under Section 24 of C.P.C to withdraw I.D.O.P.No. 1956 of 2019 pending on the file of Principal Judge, Family Court, Chennai and transfer the same to the file of Family Court, Pondicherry for being heard along with O.S.No.51 of 2018.

For Petitioner : Mrs.P.V.Rajeswari
For Respondent : Mr.S.Balasubramanian

O R D E R

The Transfer C.M.P. has been filed to transfer the I.D.O.P.No.1956 of 2019 pending on the file of Principal Judge, Family Court, Chennai to the file of Family Court, Pondicherry for being heard along with O.S.No.51 of 2018.

2. The case of the petitioner is that she had married the respondent on 17.05.2012 at Archdioese of Madras & Mylapore Risen Christ Church, Peravallur, Chennai. After the marriage, the petitioner and the respondent were living in Chennai, out of the wed lock, a male child namely, Shannan Philip was born on 15.07.2013 and she was thrown out of her matrimonial home in April 2016. Thereafter, she was living separately with her son in her parents house at pondicherry. The respondent is also staying at Pondicherry in a separate apartment and all the efforts for re-union has been failed. Hence she filed a suit in O.S.No.51 of 2018 before the Family Court, Puducherry for declaration that the marriage solemnized between the petitioner and respondent on 17.05.2012 to be dissolved on the grounds of cruelty and desertion. The respondent also appeared in the said proceedings. After one year, the respondent has filed I.D.O.P.No.1956 of 2019 before the Principal Family Court, Chennai for restitution of conjugal rights. It is pointed out

that the respondent / husband did not appear before the Mediation for several sessions of counseling and the failure report was also recorded by the Court in April 2019 and only to harass the petitioner, the respondent has filed I.D.O.P.No.1956 of 2019.

3. The learned counsel for the petitioner submits that it is difficult for the petitioner to travel to Chennai from Pondicherry by taking two year old child along with her. She would further submit that the petitioner's father had also passed away due to the act of the respondent and only her aged mother is taking care of her child and it is difficult for her to travel and to attend the Court at Chennai and hence pleaded to transfer the case, viz., I.D.O.P.No.1956 of 2019 to Family Court, Pondicherry to be tried along with O.S.No.51 of 2018.

4. Resisting the averments averred by the petitioner/wife, the learned counsel for the respondent / husband drew the attention of this Court to paragraph no.14 of petition filed by the respondent in I.D.O.P.No.1956 of 2019, wherein it is stated as under and thereby seeks to dismiss the petition:-

'14. The petitioner submits that due to his business purpose, the petitioner was forced to stay at Chennai. The petitioner to his level best tried to convince the respondent, but he could not succeed in his attempts. More over as his son at the tender age has to be with the company of his mother, he had controlled all his mind-set and had not troubled her. As he is so fond of his minor son, he had taken a flat for rent at Pondicherry and every weekend, he is visiting his son and with the permission of the respondent keeping his minor son under his custody for Saturday and Sunday and showering his love and affection on his minor son. It is no out of place to mention that his minor son is enjoying every movement of those days merrily with him. As the respondent refused to come down to Chennai and to lead her matrimonial life the petitioner has to forget about his matrimonial ecstasy in his life and leading his life as 'Sanyasi'.

5. Heard the learned counsel on either side and perused the documents placed on record.

6. It is clear from the above facts that the respondent is also having house at Pondicherry and used to visit there very often, so, it will not be difficult for the respondent to attend the Court at Pondicherry.

7. Accordingly, the Tr. C.M.P. is allowed and the I.D.O.P.No.1956 of 2010 pending on the file of the Principal Judge, Family Court, Chennai is withdrawn and transferred to the file of the Family Court, Pondicherry to be tried along with O.S.No.51 of 2018. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssdTo

1.The Principal Judge, Family Court, Chennai

2.The Judge, Family Court, Pondicherry

+1 CC to Mr.P.V. Rajeswari, Advocate sr 76749.

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RSI(CO)
SP(08/11/2019)