



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Tr.CMP.No.649 of 2019
and
CMP.No.18717 of 2019

Usha

... Petitioner

Versus

R.Iyappan

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the HMOP. No.155 of 2017 on the file of the learned Subordinate Court, Mayiladuthurai, Nagapattinam District and transfer the same to the file of the Sub Court, Thiruthani, Thiruvallur District.

For Petitioner : Mr.S.Ravi
For Respondent : Mr.R.Shivakumar for
Mr.K.M.Vijayan Associates

O R D E R

The Transfer Miscellaneous Petition has been filed seeking to withdraw and transfer the proceedings pending on the file of the learned Subordinate Court, Mayiladuthurai, Nagapattinam District in HMOP. No.155 of 2017 to the file of learned Sub-Court, Thiruthani, Thiruvallur District.

2. The case of the petitioner is that the respondent and the petitioner are husband and wife and the marriage between the parties was solemnized on 23.03.2009 at Rani Mahal Kalyana Mandapam as per Hindu Rites and Customs. Out of the said wedlock, one female child was born on 20.09.2010 and the said child is living with the petitioner from the date of birth. The respondent is a business man and earning Rs.1,50,000/- per month as salary. The respondent had caused mental agony to the petitioner on several basis and he has also not provided any basic amenities including food to the petitioner and her child. Due to the cruelty caused to the petitioner, the petitioner left the matrimonial home during November 2011 and also filed a



petition for domestic violence in D.V.C No.54 of 2012 before the Trichy Magistrate Court and the same was dismissed. Thereafter, the respondent filed a petition in HMOP. No.106 of 2013, before this Court seeking for restitution of conjugal rights and also filed the Guardian O.P.No.11 of 2015, before the learned District Judge, Nagapattinam. The respondent obtained exparte orders in both the above petitions and filed H.M.OP No.155 of 2017 under Section 13(1) (b) seeking for divorce on the ground of cruelty before the learned Principal Sub Judge, Mayiladuthurai. The petitioner/wife is residing at Thirupathi with her parents. As the petitioner's father is not living with them and her mother is also physically challenged person, she is the only person to look after her minor child and hence, she finds it difficult to travel from Tirupathi to Mayiladuthurai to attend the Court proceedings. Therefore, she seeks transfer of the petition in HMOP. NO.155 of 2017, on the file of the learned Principal Subordinate Judge, Mayiladuthurai to the file of the Sub Court, Thiruthani, Thiruvallur District.

3. The learned counsel for the petitioner would submit that the respondent has filed a petition before the Subordinate Court, Mayiladuthurai only to harass the petitioner. The petitioner is living along with her parents at Thirupathi. It is very difficult for the petitioner to travel along with her child from Thirupathi to Mayiladuthurai, which comes around 400 kms. If the case is transferred to Thiruthani, Thiruvallur District, no prejudice would be caused to the respondent. Therefore, it will be appropriate to transfer the case in HMOP. No.155 of 2017 filed by the husband from Mayiladuthurai to Thirutani, Thiruvallur District.

4. The learned counsel for the respondent has filed a counter affidavit stating that in both the two applications one for restitution of conjugal right and another one for guardianship of his daughter, she did not appear and obtained an exparte decree. The learned counsel further submitted that petitioner's relatives are residing at Mayiladuthurai and she is frequently visiting there and therefore, there is no hurdle for her to attend the Court proceedings. The learned counsel further submitted that the respondent will also bear the expenses for the petitioner travel to visit Mayiladuthurai.

5. The learned counsel for the petitioner submitted that if thirutani is not possible, instead the matter can be transferred to any of the Court at Chennai but the same should be a better place for both the persons.



6. Heard the learned counsel for the petitioner as well as the respondent. Perused the materials available on record.

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7. 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]. Further, the petitioner has also given valid and sufficient reasons to transfer the case in H.M.O.P.No.155 of 2017.

8. Considering the convenience of the parties herein, this Court is inclined to withdraw the HMOP. No.155 of 2017 on the file of the Principal Sub Court, Mayiladuthurai and transfer the same to the file of the Sub Court Tambaram, to enable the parties to attend the proceedings, as both the parties can be defended by their respective counsels at the time of trial. The Court below shall take into consideration the fact that the parties are already separated, fighting the legal battle regarding their life from 2011 onwards, but till date no compromise has been arrived between them. Hence, the Court below can decide the issue as expeditiously as possible to give quietus to the dispute between the parties.

9. In the result, the Transfer Civil Miscellaneous Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Mayiladuthurai
2. The Subordinate Judge, Tambaram.

+1 cc to M/s.K.M.Vijayan Associates, Sr.No. 91334

+1 cc to M/s.S.Ravi, Advocate Sr.No. 91038

AKM/06.01.2020/3P-5C /

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