

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

C O R A M

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

TR C.M.P. No.754 of 2019
and
C.M.P.No.21125 of 2019

Mrs.S.Sandhiya ... Petitioner

Vs.

Mr.N.Sundar ... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to transfer the H.M.O.P.No.1482 of 2018 on the file of Family Court, Coimbatore to Family Court, Chennai.

For Petitioner : Mr.K.Shanmugakani

For Respondent : Served - No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking to transfer the H.M.O.P.No.1482 of 2018 pending on the file of Family Court, Coimbatore to Family Court, Chennai.

2. The case of the petitioner is that she married to the Respondent on 01.09.2013 at Marudappa Gounder Mandapam, Coimbatore, according to Hindu Rites and customs. The marriage was registered at Sub-Registrar Office, Vadavlli in S.No.299 of 2013. At the time of marriage, the petitioner was a divorcee with a daughter namely S.Akshada aged about six years. The respondent and his family after knowing fully well that the petitioner is a divorcee and having a child, had agreed for marriage. The petitioner's parents offered 10 sovereigns of gold jewelery, silver articles and all other household articles and also the marriage expenses were also borne by the parents of the petitioner. After the marriage, the petitioner and the respondent had set up their matrimonial home at Coimbatore. The respondent promised the petitioner that he will take of S.Akshada as his own daughter and after marriage, the respondent voluntarily changed the daughter's initial and put his name as Step father in all her records through Gazette notification and

admitted her in school. Out of the above said wedlock, a male child was born namely S.Sai Aravind to them. Thereafter, the respondent is aggressive, angry and also a pervert and hyper sexual. The respondent was always thinking of sex in perversity. The respondent without any shame used to behave sexually in front of his parents and the petitioner's parents. Suddenly, the respondent turned hostile towards the petitioner daughter and ill-treated her and tried to drive the petitioner away from home. Further, the respondent compelled the petitioner to get money from the parents of the petitioner for maintenance of the petitioner's daughter. The petitioner's parents offered Rs.1,00,000/- with great difficulties.

3. Though, the petitioner's parents offered money, the respondent started abusing the petitioner's daughter sexually and therefore, she filed a compliant before the Thudiyalur police Station. The respondent enraged by the compliant filed by the petitioner, driven the petitioner and children out of their home in May 2017. The petitioner served a notice on 23.02.2018 to the respondent to pay maintenance and damages. The respondent in turn filed a H.M.O.P.No.1482 of 2018 seeking for divorce on false and baseless allegations before the Family Court at Coimbatore. The petitioner filed a petition against the respondent before the Judicial Magistrate, Tambaram, under the Domestic Violence Act in D.V.No.6 of 2019 and the same is also still pending. The petitioner states that she has no separate income and she is depending on her father and brother to take of her and her children. The petitioner further states that she is having a school going children and there is every possibility of danger to the lives of the petitioner and her children by the respondent, if she attends the Court at Coimbatore. Since, the petitioner is the resident of Perungulathur, she finds it difficult to travel from Perunkulathur to Coimbatore to attend the Court proceedings. Therefore, she seeks transfer of the H.M.O.P.No.1482 of 2018 filed by the husband before the Family Court, Coimbatore to Family Court, Chennai.

3. Notice was ordered to be served on the respondent and the respondent has received the same on 28.10.2019 through Court as well as privately. Though notice was received on the respondent, there was no representation on his behalf either through counsel or in person. Therefore, this Court directed the Registry to verify whether any vakalat has been filed on behalf of the respondent. The Registry after verification found that no vakalat has been filed and printed the name of the petitioner in the cause-list. Though the name has been printed in the cause-list, none appeared on behalf of the respondent.

5. 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.1482 of 2018 from the file of Family Court, Coimbatore to the file of Family Court, Chennai.

6. Considering the pleadings made by the petitioner in the accompanying affidavit and as per the orders of the Hon'ble Supreme Court, this Court is inclined to withdraw the H.M.O.P.No.1482 of 2018 pending on the file of Family Court, Coimbatore and transfer the same to Family Court, Chennai.

7. Accordingly, the H.M.O.P.No.1482 of 2018 pending on the file of Family Court, Coimbatore is withdrawn and transferred to the file of Family Court, Chennai.

8. In view of the submissions made by learned counsel for the petitioner, this Court directs both the parties to maintain discipline and decorum before the Court below and also co-operate with the proceedings.

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

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Judge Family Court, Coimbatore
2. The Judge, Family Court, Chennai

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