

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2019

Coram

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.803 of 2019

P.Shiju

...Petitioner

Vs.

J.Stephen

...Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Cr.P.C., to transfer the case in IDOP. No.145 of 2019, from the file of the learned XII Judge, Family Court, Kanyakumari District at Nagercoil to the file of the learned Principal Judge, Family Court, City Civil Court, Chennai.

For Petitioner : Mr.T.Umasuthan
For Respondent : Mr.G.Sathish kumar

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the petitioner seeking to withdraw the case in IDOP. No.145 of 2019, on the file of the learned XII Judge, Family Court, Kanyakumari and transfer the same to the learned Principal Judge, Family Court, City Civil Court, Chennai.

2. The case of the petitioner is that the respondent and the petitioner are the husband and wife. The marriage between the parties was solemnized on 28.12.2012 as per the Christian Rites and Customs. At the time of the marriage, the respondent was working in a private concern at Ambattur and the petitioner is working as Law Officer in Canara Bank at Madurai. After the marriage, the petitioner sought voluntary transfer from Madurai to Chennai for the purpose of joining the respondent and set up a matrimonial home at Chennai. Out of the wedlock, a female child was born on 27.04.2014. Due to misunderstanding, the respondent used to picked up quarrel with the petitioner and subsequently, he left the house and sent a legal notice for restitution of conjugal rights. During the year 2016, the petitioner's daughter was suffering from Cancer and the was infomed to the respondent. The respondent has not ready to

spend money for the medical expenses of the child and the child died on 16.01.2018. Thereafter, the respondent has filed a petition in IDOP. No.145 of 2019 before the XII Judge, Family Court, Kanyakumari and the petitioner was set an exparte in the proceedings on 09.07.2019. Thereafter, the petitioner filed an interlocutory application before the said Court and the learned Judge, on 04.09.2019, recalled the order dated 09.07.2019. The petitioner/wife is a resident of Chennai. Hence, she seeks transfer of the case filed by the husband from the Family Court, Kanyakumari to Family Court, Chennai.

3. The learned counsel for the petitioner would submit that the the petitioner is working at Chennai. If the case is transferred to Chennai, on the days of Court hearing, she would apply for one day leave. If not, she would forced to take leave for a couple of days to attend the Court at Kanyakumari. This would be an additional burden for the petitioner. The learned counsel would further submit that the petitioner have spent a huge sum of Rs.40 Lakhs for taking treatment of her daughter. Therefore, financially, she was not in well. It is very difficult for her to travel alone from Chennai to Kanyakumar to attend the court proceedings. Hence, the petitioner came this Court by way of this petition and seeks transfer of the case filed by the husband pending before the Family court, Kanyakumari to the file of the Family Court, Chennai.

4. The learned counsel appearing for the respondent would submit that the respondent has vehemently denied all the allegations made by the petitioner and he has filed counter affidavit. After the marriage, the petitioner always used to humiliate the respondent as to his hon in private sector and unnecessary compared his salary which was less than what she earned. On 27.01.2015, the petitioner forced the respondent to send out from the house citing that she did not want to live with the respondent anymore. The respondent has taken several attempts for reunion, but the petitioner did not even accept the mediations advanced by the elders of the family and she was adamant on her part. After separation, the respondent used to call the petitioner and sent messages continuously. But she was never attending the calls and never replied the same. Further, the respondent submitted that the news of sudden and unexpected demise of the child on 16.01.2018 was not even communicated by the petitioner. Without any information, the petitioner and her parents has taken the child to her village at Nagercoil on the very same day itself. The respondent received a news on the next day morning through his relative and he rushed to Nagercoil along with his family members. On 06.05.2019, the father of the respondent died. All the family members of the petitioner was attended the funeral ceremony except the petitioner and her parents. Then only the respondent had filed a petition for

divorce and the petitioner did not attend the hearings and the learned Judge, Family court, on 09.09.2019 stating that the petitioner was set exparte.

5. Heard the learned counsel for the petitioner as well as the respondent and also perused the materials available on record.

6. It is seen from the records that the petitioner and the respondent are the husband and wife and due to the misunderstanding between them, they were living separately and the respondent has filed a petition for dissolution of marriage before the Family Court, Kanyakumari.

7. This transfer petition is filed by the wife and she seeks the transfer of the matrimonial proceedings filed by the husband against her in Family Court, Chennai, where she now resides. It is the petitioner's case that she cannot travel from time to time the distance of 706 kms. between Chennai and Kanyakumari to contest the divorce petition and no one to accompany her. Her parents are aged person.

8. On behalf of the husband, it has been submitted that on several attempts of mediation, the petitioner has not accepted to join with him and the respondent is living in Kanyakumari and the petitioner's native is also the same.

9. Considering the convenience of the petitioner and in the absence of any male member to accompany her from Chennai to kanyakumari, it would be just and proper that the matrimonial proceedings pending in the Family Court, Kanyakumari be transferred to the Family Court, Chennai.

10. Accordingly, this Court is inclined to allow this petition for transfer and the learned Judge, Family Court, Kanyakumari is directed to transmit the entire records in HMOP. No.145 of 2019 to the file of the Family court, Chennai.

11. The petition for transfer is thus allowed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1.The XII Judge, Family court, Kanyakumari District at Nagercoil

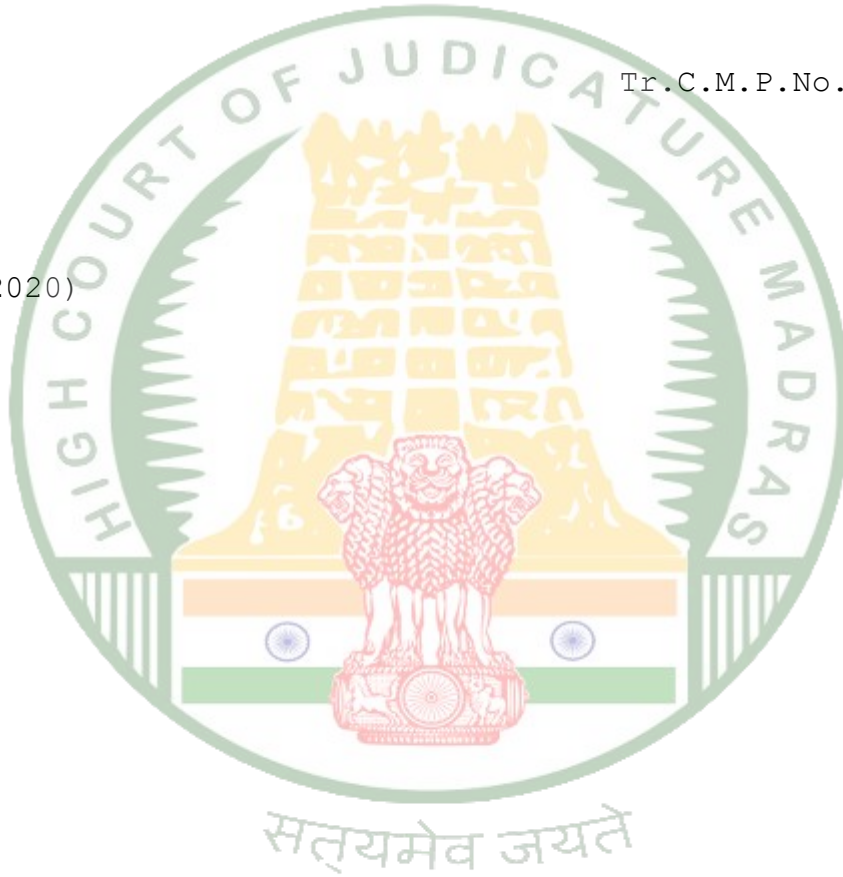
2.The Principal Judge, Family Court

City Civil Court Campus, Chennai

+1 CC to Mr.R. Umasudan, Advocate sr 99309.

Tr.C.M.P.No.803 of 2019

PM(CO)
SP(11/02/2020)



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