



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.837 of 2019 and
C.M.P.No.23046 of 2019

Dr.C.Kundhavai

... Petitioner

Vs.

T.Adhikayan
Rep.by his Power agent
Mr.A.Thilagan

... Respondent

Prayer:

Transfer Civil Miscellaneous Petition is filed under Section 24 Rule (1) (2) of Civil Procedure, to withdraw and transfer the H.M.O.P.No.74 of 2019, pending on the file of learned Principal Subordinate Judge, Kumbakonam to the Family Court, Chennai.

For Petitioner : Mr.Sunder Mohan

For Respondent : Mr.T.Saikrishnan

O R D E R

The petitioner herein, who is the wife of the respondent, has filed the present petition seeking to transfer H.M.O.P.No.74 of 2019 pending on the file of learned Principal Subordinate Judge, Kumbakonam to the Family Court, Chennai.

2. The case of the petitioner is that she got married to the respondent on 30.11.2015 at Pon Tamil Thirumana Mandappam, Mannai Road, Vilamal, Thiruvarur. After the marriage, both the parties are staying at USA. The petitioner, being a Doctor has completed her graduation in Chettinadu University and the parents of the petitioner are medical practitioners, her father was formerly the Head of Department of Surgery in Govt., Thiruvarur Medical College and Hospital, following his retirement, now works as the Managing Director of VST Srishakthi

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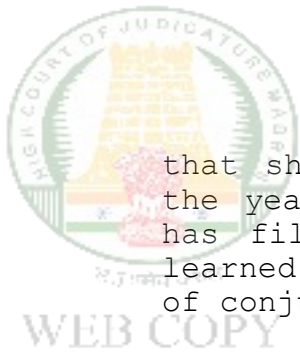


Hospital, Thiruvvarur and her mother is currently designated as Joint Director of Health service, Thiruvvarur.

3. It is the further case of the petitioner that the respondent's parents had informed that their son, viz., the respondent has completed his Engineering and was employed as a Development Manager in Cummins Company at Indiana Polis, U.S., and was earning substantial income and further assured that he will settle down in India within two years. Thereafter, they had expressed their consent to the petitioner to pursue her higher studies, during the time of finalisation of marriage and the marriage was conducted in a grand manner. At the time of marriage, her parents had provided 100 Sovereigns of gold jewellery, silver articles etc., apart from gifting gold jewels to the respondent.

4. According to the petitioner, she had discharged all her duties as a daughter-in-law and as a wife to the respondent to their utmost satisfaction. The respondent had left the office where he claimed to have been employed as Development Manager and he returned to home stating that his services got ousted. The petitioner was conceived in the month of March, 2016 and the respondent's mother visited United States during the month of June 2016. Thereafter, the respondent started regularly teasing the petitioner and without any reason, became violent at many times. Since the determination of sex in fetus is not prohibited in USA and knowing that the petitioner is carrying a female child, she was regularly subjected to ill-treatment, verbal and psychological abuse. There was lot of difference of opinion arose between the parties. Apart from that, the respondent's family had committed ill motive against the petitioner by withholding the original passports, OCI documents and birth certificates of her child. Despite all requests to the respondent's parents to strengthen the relationship and attempts to get the passports, the same did not yield any positive results.

5. It is also the case of the petitioner that the respondent and his parents have not visited the baby or the petitioner for almost 26 months. The petitioner is currently pursuing her post graduation, which fact was conveyed to the respondent's parents in-person along with her parents. Due to the lack of permanency in employment and place of residence, the respondent could not provide a comfortable life to the petitioner. Pursuant to the orders passed by the Madurai Bench of this Court in Crl.O.P.No.4028 of 2019, the respondent with great reluctance has arranged her daughter's duplicate passport in United States by signing the non applying parent form. The petitioner states



that she will be completing her post graduation by the end of the year 2021, with a view to spoil her career, the respondent has filed a petition, viz., H.M.O.P.No.74 of 2019 before the learned Principal Subordinate Judge, Kumbakonam for restitution of conjugal rights.

6. Also, the petitioner being a woman cannot travel a distance of 600 Kms up and down from Chennai to Kumbakonam with her child to attend the hearing. Further, for each travel, a person from family has to accompany her for the hearing, which is practically very difficult, hence the said H.M.O.P. pending on the file of learned Principal Subordinate Judge, Kumbakonam may be withdrawn and transferred to the file of Family Court, Chennai.

7. In contrary, a detailed counter affidavit has been filed by the respondent stating that the petitioner has deserted the respondent on 08.01.2017, when she left the matrimonial home at USA without any justifiable reason and as such, the petitioner was constrained to file the H.M.O.P.No.74 of 2019. The petitioner had also given a false police complaint on 11.03.2019 to the Kumbakonam [West] Police Station by wielding the influence of her politically connected parents and powerful lawyer uncle, on the basis of which, FIR in Crime No.71 of 2019 has been registered by the police under Section 498A and others, as against the respondent and his parents. Further, the petitioner approached the Madurai Bench of this High Court by way of Crl.O.P.(MD) No.4028 of 2019 seeking anticipatory bail and the same was granted.

8. The counter of the respondent proceeds to state that the petitioner seems to be interested only in harassing the petitioner by filing petitions one after the other and initially, the petitioner lodged a police complaint and harassed, now, she has filed the present transfer petition without any reasonable grounds. Apart from that, the H.M.O.P.No.74 of 2019 has been filed before the Sub-Court at Kumbakonam wherein the parties can be represented through their advocates and the presence of the parties is not mandatory for every hearing. Therefore, the reasons stated by the petitioner that she is not in a position to travel to Kumbakonam or that she apprehends for her safety and that she could not meet the travel expenses, are all totally false and frivolous.

9. It is further averred in the counter affidavit that the petitioner is pursuing her post graduate studies in Ramachandra Medical University and as such, she may not be in a position to skip the classes and be present during every hearing in the event of the matter getting transferred to the Family Court,



Chennai. Further, she can conduct the case at Kumbakonam with the comfort of engaging a counsel, which action being performed by her. Without prejudice to the submissions, averments and allegations made by the petitioner, which are totally false and frivolous, the respondent is willing to bear the reasonable expenses to travel by second A/C train to Thiruvavur, which is only 40 Kms from Kumbakonam and the petitioner can stay at her comfort in her parents home. There are no reasonable grounds made out for maintaining the said transfer petition and further more, the said petition is not at all maintainable and prays to dismiss the petition.

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

11. On perusal of the materials available on record and after hearing the learned counsel on either side, it is seen that the respondent / husband is residing in USA and the petitioner is pursuing her post graduation at Ramachandra Medical University and will be completing the same in the year 2021, hence it would be difficult for her to attend the hearing. In view of the said averments, counter averments, submissions made on either side and taking note of the fact 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], this Court is inclined to allow this petition seeking for transfer.

12. Accordingly, the H.M.O.P.No.74 of 2019 pending on the file of learned Principal Subordinate Judge, Kumbakonam is withdrawn and transferred to the Family Court, Chennai. The Registry of the Principal Subordinate Court, Kumbakonam is directed to transmit the entire case papers to the Family Court, Chennai within a period of four weeks from the date of receipt of copy of this order.

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

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



ssd

To

WEB COPY

1. The Principal Subordinate Judge,
Kumbakonam

2. The Family Court, Chennai.

+lcc to M/s.Sai & Bharath, Advocate sr.99243

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C.M.P.No.23046 of 2019

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