

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR C.M.P. No.495 of 2017
and C.M.P.No.10164 of 2017

K.Rajeena Parveen

... Petitioner

Vs.

A.Kahn Alauthin

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw O.S.No.1 of 2017 on the file of the Principal Family Court, Coimbatore and to transfer the same to the file of the District Family Court, Dharmapuri.

For Petitioner : Ms.G.Vaishali for
M/s.T.Fenn Walter Associates

For Respondent : No appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking the relief to withdraw O.S.No.1 of 2017 on the file of the Principal Family Court, Coimbatore and to transfer the same to the file of the District Family Court, Dharmapuri.

2. The respondent and petitioner are husband and wife. The petitioner/wife has filed Tr.C.M.P.No.495 of 2017 seeking the relief to withdraw O.S.No.1 of 2017 from the Principal Family Court, Coimbatore and to transfer the same to the file of the District Family Court, Dharmapuri. The petitioner and the respondent got married on 10.03.2004 as per Islam Rites and Customs. She gave birth to two sons and they were now aged about 7 and 11 years. The respondent filed an OS.No.1 of 2017 seeking for restitution of conjugal rights before the Principal District Family Court, Coimbatore. The respondent took the petitioner to his showroom and asked her to do some work without wearing burha . Further, he asked her to have lunch with some unknown persons in the hotel. She also submits that he tortured her mentally and physically. He uses filthy languages and abuses her. He did not allow her to meet her

family members and he always irritating his wife. Further, he took their children along with him, without knowledge of his wife. The petitioner had given a police complaint and in the police station, he had handed over the children to the petitioner/ wife.

3. The learned counsel appearing for the petitioner submitted that the petitioner residing at Dharmapuri District along with her sons and she cannot regularly appeared before the Principal Family Court, Coimbatore, for attending the said HMOP proceedings. The children are studying in Grade 3 and Grade 7 at Indian Public School, Harur. She will not be in a position to take them along with her and leave them alone with her. Her parents are taken care of children education and maintaining her. She cannot spend more money for travelling to Coimbatore for appearing before the Principal Family Court, Coimbatore. Hence, she seeks to transfer the case in O.S.No.1 of 2017 from the Principal Family Court, Coimbatore and to transfer the same to the District Family Court, Dharmapuri.

4. The Tr.C.M.P has filed in the year 2017 and this Court had directed the petitioner to serve notice to the respondent. They have not taken steps and the same has been kept pending till 2019 and only on 17.09.2019, this Court directed the petitioner to take fresh steps, which was listed under the caption for 'default cases'. They have taken out notice to the respondent and the same has been served on the sole respondent on 21.09.2019 by private notice and through Court on 03.10.2019. The Registry is directed to verify any vakalat has been filed by the respondent and after verification, it was found 'no vakalat' has been filed on behalf of the respondent. Thereafter, the name of the respondent A.Kahn Alauthin, S/o.Abdhul Salam, Muthamil Nagar, Pollachi Prathana Salai, Malumichampatti, Coimbatore has been printed in the cause list and even today, neither the respondent nor his counsel is appeared before this Court. Hence, this Court is of the view that the petitioner's husband does not choose to defend the case.

5. In view of the above said facts, this Court is inclined to allow the Tr.C.M.P.No.495 of 2017. Since the wife is staying in Dharmapuri along with two sons, who are minors and hence, it will be just and at the convenience of the petitioner and the same is transferred. The Principal Family Court, Coimbatore is directed to withdraw O.S.No.1 of 2017 and transfer to the District Family Court, Dharmapuri.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Family Court,
Coimbatore.
2. The District Family Court,
Dharmapuri.

+1cc to Mr.T.Fennwalter Associates, Advocate Sr.90300

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srg 13/12/2019

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