

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.777 of 2018
and C.M.P.No.19143 of 2018

L.Vijayalakshmi

Petitioner

versus

Arunkumar B

Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.323 of 2016 pending on the file of the Sub Court, Tiruppur and transfer the same to the file of the IV Additional Family Court, Chennai, to be tried along with the Petition in H.M.O.P.No.2370 of 2018 pending on its file.

For Petitioner : M/s.S.Bharathi

For Respondent : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw the case i.e. H.M.O.P.No.323 of 2016 pending on the file of the Sub Court, Tiruppur and transfer the same to the file of the IV Additional Family Court, Chennai, to be tried along with the Petition in H.M.O.P.No.2370 of 2018 pending on its file.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 23.02.2011 at Sri Muthu Mahal Thirumana Mandapam, Sathi Road, Gobichettypalayam, as per Hindu rites and customs. During the time of marriage, the petitioner was employed as Manual Tester in Accenture Services Private Limited, Chennai. On the other hand, the respondent was working as Deputy Manager in Whirlpool Services Private Limited, Pune. After the marriage, both the petitioner and respondent were set up a matrimonial home at Pune and they were lived together for a considerable period. In the meantime, the petitioner resigned the job in February 2012 and joined in Sears IT Management Services, Pune. Thereafter, in the matrimonial home, the respondent and his mother are ill-treated the petitioner, due to which, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents.

4. After knowing the particulars of the above case, the petitioner has filed a petition against the respondent before the IV Additional Family Court, Chennai, under Section 9 of the Hindu Marriage Act, 1955, for the relief of restitution of conjugal rights. The said petition is now pending before the IV Additional Family Court, Chennai as H.M.O.P.No.2370 of 2018. In the said circumstances, the petitioner has approached this Court by way of filing the present Transfer Civil Miscellaneous Petition for the relief as stated supra.

5. According to the petitioner, she is working as a software engineer at Emerio Technologies Private Limited in Chennai, from August 2016 onwards, she is residing along with her parents at Chennai, the distance between her parents residence and Tiruppur is about 350 kilometers, being a lady, it is very difficult for her to go to Tiruppur to attend the Court proceedings. In the said circumstances, if the said petitions are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. In respect to the respondent, at the time of admitting this petition, this Court directed the registry to issue notice to the respondent. Obeying the order passed by this Court, notice was sent to the respondent and the same was returned with an endorsement as "not claimed. So, the endorsement made in the returned cover will clearly shows that the respondent is not intend to receive the notice issued by this Court.

8. In the said circumstances, in order to deny the averments made in the affidavit filed by the petitioner, the respondent has not turned up. As per the affidavit filed by the petitioner, as of now, she is residing with her parents. Further, in the affidavit filed by the petitioner she has specifically stated that, if the two H.M.O.P.s are tried separately, there may be a chance for coming out the conflicting decisions and multiplicity of proceedings.

9. It is well settled law that whenever, the transfer petition is filed in matrimonial disputes, the convenience of the wife shall be given preference, as held by our Honourable Apex Court in the judgments in Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta reported in 2008 (9) SCC 353 and in Sumita Singh Vs. Kumar Sanjay and another reported in AIR 2002 SC 396.

10. Apart from that, for raising objection in respect to the allegations levelled by the petitioner against the respondent, he has not appeared before this Court, further as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account for considering the issue involved in these type of petitions.

above said situation.

12. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.323 of 2016 is ordered to be withdrawn from the file of the Sub Court, Tiruppur and transferred to the file of the IV Additional Family Court, Chennai. It is left open to the IV Additional Judge, Family Court, Chennai, to decide for joint trial or for simultaneous trial. The Subordinate Judge, Tiruppur, is directed to transmit all the records pertaining to H.M.O.P.No.323 of 2016 to the file of the IV Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned IV Additional Judge, Family Court, Chennai, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, Tiruppur.

2.The IV Additional Judge, Family Court, Chennai.

+1cc to M/s.S.Bharathi, Advocate sr.no.2287

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