

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.780 of 2018
and
C.M.P.No.19275 of 2018

S.A.Sudha

..Petitioner

versus

N.Nagaraja

..Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.364 of 2018 pending on the file of the Sub Court, Tambaram and transfer the same to the file of Family Court, Coimbatore.

For Petitioner : Mr.S.Venkatesan

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.364 of 2018 pending on the file of the Sub Court, Tambaram and transfer the same to the file of Family Court, Coimbatore.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 24.10.2007 at Arulmigu Sri Saradambal Temple, near Race Course, Coimbatore, as per Hindu rites and customs. During the time of marriage, the petitioner was working as a Software Engineer in a Firm at Bangalore, and at the same time, the respondent was working as an Engineer at Mumbai. After the marriage, due to difference of opinion arose between the petitioner and respondent, the petitioner left the matrimonial home and residing along with her parents at Coimbatore.

Consequently, she resigned her job and now working as a Teacher in a School situated at Coimbatore.

3. In the meanwhile, the respondent has filed a petition against the petitioner before the Sub Court, Tambaram, for the relief of restitution of conjugal rights. The said petition is now pending before the Sub Court, Tambaram as H.M.O.P.No.364 of 2018.

4. According to the petitioner, she is residing at Coimbatore along with her parents and the distance between her residence and Tambaram is about 450 kms, being a lady, earning minimum income, she is not in a position to move from Coimbatore to Chennai to attend the Court proceedings at Tambaram along with her aged parents. In the said circumstances, the petitioner has come out with the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

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

6. In respect to the respondent, on 13.12.2018, when this petition was listed for consideration, there was no representation on behalf of the respondent and hence, this Court directed the Registry to list this case under the caption "for orders". Today, even after printing the name of the counsel, who appearing for the respondent in the cause list, there is no representation on behalf of the respondent. Accordingly, the respondent has not raised any objection for this petition. In otherwise, the fact that the petitioner is residing with her parents at Coimbatore, is not disputed on the side of the respondent.

7. 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. In this case also, the petitioner categorically proves that she is residing along with her parents at Coimbatore, further, being a lady, it is very difficult for her to attend the Court proceedings at Tambaram. Apart from that, 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.

8. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.364 of 2018 is ordered to be withdrawn from the file of the Sub Court, Tambaram

and transferred to the file of the Family Court, Coimbatore. The learned Subordinate Judge, Tambaram is directed to transmit all the records pertaining to H.M.O.P.No.364 of 2018 to the file of the Family Court, Coimbatore, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Judge, Family Court, Coimbatore, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

sri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Tambaram.

2.The Judge,
Family Court,
Coimbatore.

+1cc M/s.S.Venkatesan, Advocate, SR.No.233

Tr.C.M.P.No.780 of 2018
and
C.M.P.No.19275 of 2018

kan(co)
kak(25/01/2019)

सत्यमेव जयते
WEB COPY