

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.833 of 2018
and C.M.P.No.20616 of 2018

S.Kumudhavarsha

... Petitioner

versus

I.Subramaniam

... Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.80 of 2018 pending on the file of the Sub Court, Mettur and transfer the same to the file of the Sub Court, Thiruppur.

For Petitioner : Mr.K.Sudhakar

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.80 of 2018 pending on the file of the Sub Court, Mettur and transfer the same to the file of the Sub Court, Thiruppur.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 29.09.1983 at Arulmigu Sakthi Mariamman Narmatha Thirumana Mahal, Salem. Due to the wedlock, the petitioner gave birth to one male child by name Gurusaker. After gave birth to male child, difference of opinion arose between the petitioner and respondent, resultantly in the year of 2000 itself, the petitioner left the matrimonial home and residing along with her parents at Thiruppur.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition before the Sub

Court, Mettur, under Section 13(1)(ia), 13(1)(ib) of the Hindu Marriage Act, 1955, for annulling the marriage. The said petition has been numbered as H.M.O.P.No.26 of 2002 and the same was dismissed on 25.10.2005. Subsequent to the dismissal of the said petition, now the petitioner again filed the petition for the same relief prayed in the earlier petition. As of now, the said petition is pending before the Sub Court, Mettur, as H.M.O.P.No.80 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.

4. According to the petitioner, she is residing at Thiruppur along with her parents and the distance between her parents residence and Mettur is about 200 kilometers, being a lady, it is very difficult for her to attend the Court proceedings at Mettur. Further, she is not having any independent income and she is depending on her parents for her day-to-day needs.

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

6. In respect to the respondent, he was served with Court notice as early as on 27.11.2018 and his name is printed in the cause list, thereafter till today, he has not appeared before this Court either in person or through counsel. It shows that the respondent is not having any objection in respect to this petition.

7. In the said circumstances, as per the affidavit filed by the petitioner, as of now, she is residing with her parents in Thiruppur without any independent income, she has specifically stated that, she is depending on her parents for her day-to-day needs. Further, being a lady, it is very difficult for her to attend the Court proceedings at Mettur.

8. 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.

9. 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.

10. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.80 of 2018 is ordered to be withdrawn from the file of the Sub Court, Mettur and transferred to the file of the Principal Sub Court, Thiruppur. The Subordinate Judge, Mettur, is directed to transmit all the records pertaining to H.M.O.P.No.80 of 2018 to the file of the Principal Sub Court, Thiruppur, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned Principal Subordinate Judge, Thiruppur, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sri
To

1.The Subordinate Judge,
Mettur.

2.The Principal Subordinate Judge,
Thiruppur.

+1cc to Mr.K.Sudhakar, Advocate Sr.1963

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srg 05/02/2019