

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2019

DELIVERED ON : 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.913 of 2018  
and C.M.P.No.22414 of 2018

S.Uthra .. Petitioner  
versus  
V.Rajanarasimhan .. Respondent

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw O.P.No.3855 of 2017 pending on the file of the V Additional Family Court, Chennai and transfer the same to the file of the Family Court, Coimbatore.

For Petitioner : Mr.G.Sugadev Rajaguru  
For Respondent : Mr.P.Sunil

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. O.P.No.3855 of 2017 pending on the file of the V Additional Family Court, Chennai and transfer the same to the file of the Family Court, Coimbatore.

2. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 13.11.2015 at Ananda Tirumana Maaligai, Chrompet, Chennai, as per Hindu rites and customs. Due to the wedlock, on 11.07.2016, the petitioner gave birth to one male child, namely, Adhvik. Now, the age of the child is 2 years and 4 months. After gave birth to the male child Adhvik, difference of opinion arose between the petitioner and respondent, resultantly, the petitioner left the matrimonial home and residing along with her parents at Coimbatore. Admittedly, at the time of leaving the matrimonial home by the petitioner, her father was working as Chief Manager, Union Bank of India, Sowcarpet Branch, Chennai.

3. After leaving the matrimonial home by the petitioner, the respondent has filed a petition against the petitioner before the V Additional Family Court, Chennai, under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, for annulling the marriage happened between them on 13.11.2015. The said petition is now pending before the V Additional Family Court, Chennai, as O.P.No.3855 of 2017. During the pendency of the said O.P., the petitioner has approached this Court by way of filing the present Transfer Civil Miscellaneous Petition for the relief stated earlier in the first paragraph of this order.

4. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and also perused the materials available on record.

5. According to the petitioner, since her father was transferred from Chennai to Coimbatore as Deputy Regional Head, she has to go along with her father, in otherwise she is not derived any independent income from any source, it is the compulsion for the petitioner to move to Coimbatore along with her child. Further, the petitioner is having a child in the age of 2 years and 4 months, it is very difficult for her to attend the Court proceedings in Chennai after travelling 500 kms all along from Coimbatore. Further, the petitioner is not having any sufficient income for spending towards the travelling expenses.

6. On the other hand, the learned counsel appearing for the respondent would contend that even though the father of the petitioner was transferred to Coimbatore, the mother of the petitioner is still residing in Chennai and working as Government employee. Further, the parents of the petitioner are having 2 flats, viz., Flat Nos.5 & 6, Old No.11, New No.21, Gurukruppa Apartments, Samiyar Garden Street, Ashok Nagar, Chennai - 600 083. More than that, the petitioner is a post graduate degree holder, she was working as a Research Assistant and Guest Faculty in University of Madras and also as a Teacher in D.A.V.Boys School, Gopalapuram, Chennai. She is the Founder and President of a Non-Profit, Non-Governmental Organization registered as 'Upakarya Trust' for the poor and destitute children mainly focusing on the welfare of physically and mentally challenged children and social worker, so the petitioner earned much money and spend it for maintaining the said position. It is the contention of the respondent that only for the purpose of harassing the respondent, the petitioner has filed this petition without having any sufficient ground.

7. Now, on considering the affidavit and the counter affidavit filed by the petitioner and respondent respectively, they made so many personal allegations against each other. It is for them to prove the said allegations only at the time of trial in O.P.No.3855 of 2017, in otherwise for disposing this

petition, this Court has to see whether the petitioner projected sufficient cause for allowing this petition or not.

8. On the side of the petitioner, in support of her arguments, she has produced the copy of the transfer order issued in favour of her father dated 18.05.2018 and also the relieving order dated 22.05.2018.

9. As per the Leave and Licence Agreement dated 08.06.2018, now the father of the petitioner was moved to Coimbatore and residing in Arivozhi Nagar, Vilankuruchi, Coimbatore as a tenant. The medical prescription sheet issued in favour of the petitioner and her child dated 17.10.2018 shows that the petitioner got treatment in Coimbatore. Accordingly, those documents proved that as of now the father of the petitioner was moved to Coimbatore and staying as a resident of Coimbatore along with the petitioner.

10. Per contra, on the side of the respondent, no relevant documents were produced to show that the mother of the petitioner is residing in Chennai and attending her duty. So without any relevant documents, the arguments advanced by the learned counsel appearing for the respondent cannot be accepted. No doubt, the documents which are produced on the side of the petitioner proves that the petitioner and her child is residing with her father in Coimbatore. Only in the said circumstances, this petition has been filed by the petitioner.

11. 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. 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.

12. Apart from that, if really the petitioner is residing in Chennai, it is not necessary for her to file this petition for the relief stated in this petition. In the arguments advanced on the side of the respondent and in the counter affidavit it was stated that, the petitioner being the post graduate degree holder having sufficient income, but in order to prove the same, no relevant documents have been produced on the side of the respondent to show the stand taken by the respondent is a genuine one. So, without any documents, the arguments advanced by the learned counsel appearing for the respondent that the petitioner is having the sufficient means cannot be accepted. In the said circumstances, allowing this

petition is the appropriate relief for the petitioner. Being the male member, attending the Court proceedings in Coimbatore is not a difficult task to the respondent.

13. Accordingly, for the foregoing reasons stated above, this Transfer Civil Miscellaneous Petition is ordered. The petition in O.P.No.3855 of 2017 is pending on the file of the V Additional Family Court, Chennai and transferred to the file of the Principal Family Court, Coimbatore. The learned V Additional Judge, Family Court, Chennai is directed to transmit all the records pertaining to O.P.No.3855 of 2017 to the file of the Principal 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 Principal Judge, Family Court, Coimbatore, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1. The V Additional Judge, Family Court, Chennai.
2. The Principal Judge, Family Court, Coimbatore.

+1cc to Mr.K.P.Santhosh, Advocate, S.R.No. 6376  
+1cc to Mr.Sugadev Rajaguru, Advocate, S.R.No. 7532

Tr.C.M.P.No.913 of 2018

MG(CO)  
GN(13/02/2019)

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