

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2019

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.864 of 2018
and C.M.P.No.21405 of 2018

T.Kaavya

..Petitioner

versus

A.Manoj Kumar

..Respondent

Prayer: Petition is filed under Section 24(3) of C.P.C., to withdraw H.M.O.P.No.427 of 2018 pending on the file of the Sub Court, Tambaram and transfer the same to the file of the Family Court, Erode, to be tried along with the Petition in F.C.O.P.No.70 of 2018 pending on its file.

For Petitioner : Mr.K.Selvaraj
for Mr.D.Selvaraju

For Respondent : M/s.K.Sandhya
for Mr.S.Chakkaravarthi

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24(3) of the Code of Civil Procedure to withdraw the case i.e. H.M.O.P.No.427 of 2018 pending on the file of the Sub Court, Tambaram and transfer the same to the file of the Family Court, Erode, to be tried along with the Petition in F.C.O.P.No.70 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 09.06.2016 at Adithya Kubera Mahal, Teachers Colony, Erode, as per Hindu rites and customs. Subsequently, on 20.06.2016, the marriage was registered in the Office of Sub-Registrar, Erode in M.S.No.272 of 2016. After the marriage, both the petitioner and respondent were lived together in the matrimonial home at Chennai. After some time, from the date of marriage, difference of opinion arose between them, resultantly, the petitioner left the matrimonial home and residing along with her parents at Erode. Further, she has filed a petition before

the Family Court, Erode, under Section 12(1)(a) and 13(1)(i-a) of the Hindu Marriage Act, 1955, for annulling the marriage happened between them on 09.06.2016. The said petition is now pending before the Family Court, Erode, as F.C.O.P.No.70 of 2018.

3. After knowing the particulars of the above case, the respondent herein has filed one another petition against the petitioner before the Sub Court, Tambaram, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, for the same relief sought for by the petitioner. Now, the said petition is pending before the Sub Court, Tambaram as H.M.O.P.No.427 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 Erode along with her parents, the distance between her residence and Tambaram is about 350 kms, being an unemployed lady, it is very difficult for her to travel from Erode to Tambaram to attend the Court proceedings at Tambaram. Further, she is depending on her parents for her day-to-day needs without any independent income for litigation expenses.

5. Per contra, the learned counsel appearing for the respondent would submit that it will not be difficult for the petitioner to attend the Court at Tambaram and prayed for dismissal of the transfer petition.

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

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 stated that being an unemployed lady, it is very difficult for her to attend the Court proceedings at Tambaram and it is not a easy job for the petitioner to travel 350 kms for attending 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. In the result, the Transfer Civil Miscellaneous Petition is ordered. The petition in H.M.O.P.No.427 of 2018 is ordered to be withdrawn from the file of the Sub Court, Tambaram and transferred to the file of the Family Court, Erode. It is left open to the learned Judge, Family Court, Erode, to decide for joint trial or for simultaneous trial. The learned Subordinate Judge, Tambaram, is directed to transmit all the records pertaining to H.M.O.P.No.427 of 2018 to the file of the Family Court, Erode, 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, Erode, is directed to dispose of the case as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge, Tambaram.

2.The Judge, Family Court, Erode.

+1cc to Mr.D.Selvaraju, Advocate, S.R.No.3116

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AD(CO)
GSP(08/02/2019)

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