



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P(MD)No.11 of 2019

and

C.M.P(MD)No.264 of 2019

P.Sundaravalli

... Petitioner/
Respondent

Vs.

P.Balapandian

... Respondent/
Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw the divorce petition filed by the respondent in H.M.O.P.No.108 of 2018 on the file of the Sub Court, Ramanathapuram and to transfer the same to the file of the Family Court, Tirunelveli to conduct joint trial along with H.M.O.P.No.302 of 2018.

For Petitioner : Mr.K.R.Laxman

For Respondent : Mr.J.Senthil Kumaraiah

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.108 of 2018 from the file of the Sub Court, Ramanathapuram to the file of the Family Court, Tirunelveli to try along with H.M.O.P.No.302 of 2018.

2.It is stated in the petition that the marriage between the petitioner and the respondent was solemnized on 04.06.2017. After marriage, both of them lived happily for some time. Later, due to misunderstanding, the respondent herein / husband of the petitioner filed H.M.O.P.No.108 of 2018 before the Sub Court, Ramanathapuram for divorce. The petitioner / wife filed H.M.O.P.No.302 of 2018 before the Family Court, Tirunelveli for restitution of conjugal rights. The grievance of the petitioner is that she is residing at Tirunelveli, it is very difficult for her to travel about 200 kms from Tirunelveli to Ramanathapuram for attending each and every hearing of the case. Since the issue involved in both the cases is the same, it is requested that both the cases be tried together and therefore, she requested to transfer the petition filed by the respondent / husband in H.M.O.P.No.108 of 2018 to the file of the



Family Court, Tirunelveli and to direct the Family Court Judge, Tirunelveli to try H.M.O.P.No.108 of 2018 along with H.M.O.P.No.302 of 2018, which is pending on his file.

3.The learned counsel for the petitioner reiterated the averments made in the petition. He would further submit that though the matter was referred to the Mediation and Conciliation Centre attached to this Bench, for amicable settlement, it could not be succeeded in view of the fact that the respondent / husband insisted her to get transfer from Cuddalore to Ramanathapuram, which is not in her hands. Thus, he prayed to allow this petition.

4.The learned counsel appearing for the respondent vehemently opposed for transfer of the case in H.M.O.P.No.108 of 2018. However, he submitted that in the event of transfer, this Court may direct the Court below to dispose of both the cases within a stipulated time.

5.Heard the learned counsel for both sides and perused the materials available on record.

6.The petitioner filed H.M.O.P.No.302 of 2018 for restitution of conjugal rights before the Family Court, Tirunelveli. The respondent filed H.M.O.P.No.108 of 2018 for dissolution of marriage, before the Sub Court, Ramanathapuram. As rightly stated by the learned counsel for the petitioner, the issue involved in both the cases are interrelated to each other and therefore, the same should be tried together. The joint trial would not only save the valuable time of the parties but also the Court. It is seen that the petitioner / wife is residing at Tirunelveli and the respondent / residing at Ramanathapuram. The Hon'ble Supreme Court in the judgment reported in **2008 (9)SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)**, has held that convenience of woman is to be taken into consideration first at the time of considering transfer application. In view of the above, I am inclined to allow this petition and to transfer H.M.O.P.No.108 of 2018 to the file of the Family Court, Tirunelveli for joint trial with H.M.O.P.No.302 of 2018.

7.In view of the above, this Transfer Civil Miscellaneous Petition is allowed with the following direction:

i)The learned Subordinate Judge, Ramanathapuram is directed to transmit the entire records in H.M.O.P.No.108 of 2018 to the file of the Family Court, Tirunelveli, within a period of two weeks from the date of receipt of copy of this order.

ii)The learned Family Court Judge, Tirunelveli, after obtaining the records on transfer, is directed to tag H.M.O.P.No.108 of 2018 along with H.M.O.P.No.302 of 2018 which is pending on his file, conduct joint trial



and dispose of the same on merits and in accordance with law, preferably within a period of six months from the date of receipt of records relating to H.M.O.P.No.108 of 2018.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judge,
Family Court,
Tirunelveli.

2.The Subordinate Judge,
Ramanathapuram.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate in SR-59188

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SMN

PK/12.04.2019 : 3P/4C