



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

Tr.C.M.P.(MD).No.194 of 2019
and
C.M.P.(MD).No.4498 of 2019

P.Indira

.. Petitioner

Vs.

Bala Ganesh

.. Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the case in H.M.O.P.No.241 of 2018 on the file of the Sub Court, Tuticorin and to transfer the said case to the Principal Sub Court, Nagercoil.

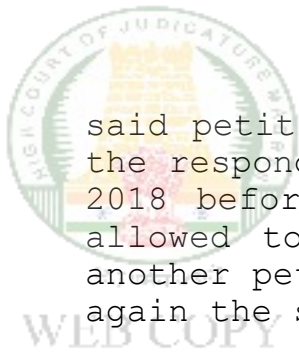
For Petitioner : Mr.C.Vakeeswaran
For Respondent : Mr.Senthil Sankara Nathakumar

ORDER

This petition has been filed by the wife to withdraw the case in H.M.O.P.No.241 of 2018 on the file of the Sub Court, Tuticorin and transfer the same to the file of the Principal Sub Court, Nagercoil.

2.The following facts are not disputed:-

The petitioner is the wife residing at Thiruvananthapuram. The marriage between the petitioner and the respondent was solemnized on 26.11.2012 according to Hindu Rites and Ceremonies. Out of the wedlock, one male child was born on 20.08.2014. Earlier the wife filed a maintenance application in M.C.No.177 of 2015 before the Family Curt, Thiruvananthapuram, as against the respondent and the same is pending. Thereafter, H.M.O.P.No.47 of 2015 was filed by the respondent before the Sub Court, Tuticorin for ~~services~~ conjugal right. At the instance of wife, the proceedings in H.M.O.P.No.47 of 2015 was transferred to Sub Court, Nagercoil and renumbered as H.M.O.P.No.72 of 2016. However, the



said petition was dismissed for default on 05.08.2016. Thereafter, the respondent husband filed a petition for divorce in O.P.No.871 of 2018 before the Family court, Thiruvananthapuram and the same was allowed to be dismissed as not pressed. The husband also filed another petition in O.P.No.26 of 2016 for custody of minor child and again the same was dismissed as not pressed.

3. Thereafter, the respondent husband filed the present petition for divorce in H.M.O.P.No.241 of 2018 before the Sub Court, Tuticorin. The petitioner is admittedly residing in Thiruvananthapuram with her 4 ½ years minor child. It is well settled that in a petition filed by the husband for divorce, convenience of wife can be given preference. In the earlier proceedings for transfer, the petition filed by the petitioner wife was allowed and the petition filed by the husband before the Sub Court, Thoothukudi was transferred to Sub Court, Nagercoil. Later the husband allowed the petition filed under Section 9 of Hindu Marriage Act to be dismissed for default. This subsequent petition for divorce is also filed before the Sub Court, Thoothukudi.

4. Having regard to the fact that the petitioner is residing in Thiruvananthapuram with her child this Court is of the view that transfer of proceedings to Principal Sub Court, Nagercoil will be in interest of justice.

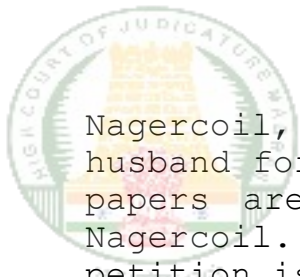
5. The learned counsel appearing for the respondent has raised serious objections.

6. Since the transfer is not to transfer the proceedings to the place of the residence of the wife but to a place which lies in between Thoothukudi and Thiruvananthapuram, this Court has no hesitation to show some lenience to the petitioner. The petitioner is not working and she is a home maker at the time of separation. The respondent husband is working and hence the convenience of the wife can be preferred well in the interest of justice.

7. In the result, this Transfer Civil Miscellaneous Petition is allowed and the case in H.M.O.P.No.241 of 2018 on the file of the Sub Court, Tuticorin is withdrawn and transferred to the Principal Sub Court, Nagercoil.

8. The learned counsel appearing for the respondent has shown interest in getting a direction for speedy disposal. The learned counsel for the petitioner has no objection.

9. In the said circumstances, the learned Principal Sub Judge,



Nagercoil, is directed to dispose of the petition filed by the husband for divorce within a period of six months from the date when papers are transmitted and received by the Principal Sub Court, Nagercoil. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sub Judge,
Tuticorin.

2. The Principal Sub Judge,
Nagercoil.

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-71537[F] dated 26/06/2019)

+1 CC to M/s.S.SENTHIL SANKARA NATHA KUMAR, Advocate (SR-72244[F] dated 28/06/2019)

Tr.C.M.P. (MD) .No.194 of 2019
26.06.2019

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