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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P(MD).No.90 of 2019

and

C.M.P(MD)No.2057 of 2019

D.Jothi

... Petitioner/Respondent

Vs.

Dr.R.Gogulan

... Respondent/Petitioner

PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, praying to withdraw the case in H.M.O.P.No.6 of 2019 pending on the file of the Subordinate Court, Coonoor and to transfer the same to the file of the Subordinate Court, Thuraiyur, Trichy District.

For petitioner : Mr.C.K.M.Appaji

For respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioner / wife seeking transfer of H.M.O.P.No.6 of 2019 from the file of the Subordinate Court, Coonoor to the file of the Subordinate Court, Thuraiyur, Trichy District.

2. The learned counsel for the petitioner submitted that the marriage between the petitioner and the respondent was solemnized on 04.06.2018. After marriage, both of them lived happily for some time. Later, the petitioner came to know that the appeal filed by the respondent's first wife is still pending in C.M.S.A.(MD).No.33 of 2017 before this Court and hence, she gave a complaint against the respondent before the Police. While so, the respondent herein / husband of the petitioner filed a petition in H.M.O.P.No.6 of 2019 on the file of the Subordinate Court, Coonoor, for restitution of conjugal rights suppressing all the facts. The grievance of the petitioner is that the respondent is the resident of Coonoor and hence, he has filed the above petition on the file of the Subordinate Court, Coonoor, whereas the petitioner is residing at Thuraiyur Taluk, Trichy District, along with her aged parents and as she is depending upon her aged parents, it is very difficult for her to travel about 560 kms from Thuraiyur to Coonoor for attending each and every hearing of the case. Thus, he prayed to allow this petition.

3. Notice and private notice sent to the respondent returned with an endorsement "left" and hence, this Court ordered notice to be served on the respondent. The respondent is appearing for the respondent before the Court below. Even after service of such notice, the respondent did not appear either in person or through any counsel.



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

5. I am satisfied with the reasons stated by the petitioner. In the decision of the Hon'ble Supreme Court reported in **2008 (9) SCC 353 (Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta)**, it has been held that convenience of woman is to be taken into consideration first while considering transfer application. In view of the above, this Court is inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

i) The learned Subordinate Judge, Coonoor, is directed to transmit the entire records in H.M.O.P.No.6 of 2019 to the file of the Subordinate Court, Thuraiyur, Trichy District, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Subordinate Judge, Thuraiyur, Trichy District, after obtaining records on transfer, is directed to dispose of H.M.O.P.No.6 of 2019 on merits and in accordance with law, as expeditiously as possible.

No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Coonoor.
2. The Subordinate Judge,
Thuraiyur, Trichy District.

+1 CC to Mr.C.K.M.APPAJI, Advocate (SR-63802[F] dated 29/04/2019)

TR. C.M.P(MD).No.90 of 2019
29.04.2019

gcg
MK (14.05.2019) 2P 4C