



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR. C.M.P(MD).No.90 of 2017

and

C.M.P(MD)No.2257 of 2017

S.Unnamalai @ Chithra ... Petitioner/Respondent/Wife

Vs.

S.Ramu ... Respondent/Petitioner/Husband

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.224 of 2016 pending on the file of the Subordinate Court, Pudukkottai and to transfer the same to the file of the Family Court, Thanjavur.

For petitioner : Mr.M.P.Senthil

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.224 of 2016 from the file of the Subordinate Court, Pudukkottai to the file of the Family Court, Thanjavur.

2. The learned counsel for the petitioner submitted that the marriage between the petitioner and the respondent was solemnized on 02.09.2009. After marriage, both of them lived happily for some time and they blessed with a male child. Now, the child is aged about 7 years. Later, the respondent did not show any interest in leading a matrimonial life and hence, the petitioner left the matrimonial home and started to live with her parents at Thanjavur. While so, the respondent herein / husband of the petitioner filed a petition in H.M.O.P.No.224 of 2016 on the file of the Subordinate Court, Pudukkottai for restitution of conjugal rights suppressing the facts. The grievance of the petitioner is that the respondent is the resident of Pudukkottai and hence, he has filed the above petition on the file of the Subordinate Court, Pudukkottai, whereas the petitioner is residing at Thanjavur,



along with her aged parents and 7 years old child. As she is depending upon her aged parents and she has to take care of her child, it is very difficult for her to travel about 60 kms from Pudukkottai to Thanjavur, along with the child, for attending each and every hearing of the case. Thus, he prayed to allow this petition.

3. Notice sent to the respondent returned with an endorsement "unclaimed" and hence, this Court ordered notice to the counsel, who 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, Pudukkottai, is directed to transmit the entire records in H.M.O.P.No.224 of 2016 to the file of the Family Court, Thanjavur, within a period of two weeks from the date of receipt of copy of this order.

ii) The learned Family Court Judge, Thanjavur, after obtaining records on transfer, is directed to dispose of H.M.O.P.No.224 of 2016 on merits and in accordance with law, as expeditiously as possible.

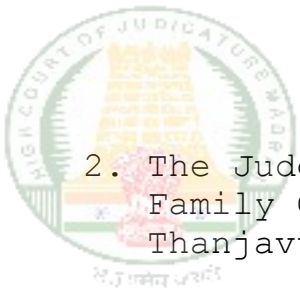
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)



2. The Judge,
Family Court,
Thanjavur.

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+1 CC to Mr.M.P.SENTHIL, Advocate (SR-64302[F] dated 30/04/2019)

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29.04.2019

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AE/ (13.05.2019) 3P 4C