



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.08.2019
CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

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TR.C.M.P(MD)No.304 of 2019
and
C.M.P. (MD)No.7050 of 2019

D.J.Sathish : Petitioner

Vs.

V.Preethu : Respondent

Prayer: Petition is filed under Section 24 of Code of Civil Procedure, to withdraw the case in H.M.O.P.No.43 of 2019 on the file of the Subordinate Court, Virudhunagar, Virudhunagar District and transfer the same to the Principal District Court, Thoothukudi.

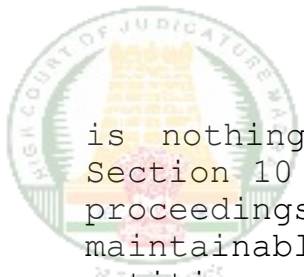
For Petitioner : Mr.B.N.Rajamohamed
For Respondent : No Appearance

ORDER

This petition has been preferred by the petitioner/husband to transfer the proceedings in H.M.O.P.No.43 of 2019, on the file of the Sub-Court, Virudhunagar District to the file of Principal District Court, Thoothukudi.

2.The petitioner is a resident of Thoothukudi. The marriage between the petitioner and the respondent was solemnized on 17.04.2017 in accordance with Hindu Rites and customs. It is also stated by the petitioner that the petitioner and the respondent jointly filed a petition under Section 13-B of Hindu Marriage Act, 1955. It is also admitted by the petitioner in the petition itself that by misfortune and because of the inability of the petitioner to appear before the Sub Court Kovilpatti, where the petition in H.M.O.P.No.86 of 2017 for divorce by mutual consent was presented, the same was dismissed. The petitioner contended that the respondent has filed an appeal as against the order dismissing the petition in H.M.O.P.No.86 of 2017, on the file of Sub Court, Kovilpatti.

3.It is stated further that the respondent after filing the appeal in H.M.C.M.A.No.12 of 2019 as against the order in H.M.O.P.No.86 of 2017, has presented another petition in H.M.O.P.No.43 of 2019, on the file of the Sub Court, Virudhunagar for divorce on the ground of cruelty. Learned counsel for the petitioner stated that the present petition filed by the respondent



is nothing, but a re-litigation and it has to be stayed under Section 10 of the Civil Procedure Code. The petitioner described the proceedings that is now pending in H.M.O.P.No.43 of 2019 as not maintainable and submitted that it is filed only to harass the petitioner/husband.

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4.It is only on the ground that the proceedings in H.M.O.P.No.43 of 2019 is not maintainable, the present petition is filed.

5.The learned counsel appearing for the petitioner, when confronted with a question whether the petitioner/ husband is agreeable for giving divorce in the present proceedings that has now been initiated by the wife, submitted that the husband will not agree for divorce due to change of circumstances.

6.The petitioner has admitted that he has filed a petition jointly along with his wife seeking divorce by mutual consent in H.M.O.P.No.86 of 2017 and states that he could not appear by misfortune or inability. The said petition was dismissed only on the ground of non appearance of the petitioner. This Court is unable to find any bonafides in the present petition making allegations against the wife for filing another petition for divorce in H.M.O.P.No.43 of 2019, merely because the respondent has filed an appeal and is pending in H.M.C.M.A.No.12 of 2019, on the file of Principal District Court, Thoothukudi.

7.The maintainability of the petition in H.M.O.P.No.43 of 2019 cannot be questioned. The second petition filed by the wife is on a different cause of action and she is entitled to prosecute the same without prosecuting H.M.C.M.A.No.12 of 2019, which is pending at her instance. By his conduct, the petitioner alone is harassing the wife by driving here to file another petition without any reasonable cause.

8.In that view of the matter, the only ground urged by the petitioner does not hold water and this Court find no ground to transfer the proceedings.

9.As a result this Transfer Civil Miscellaneous petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar



TR.C.M.P(MD)No.304 of 2019

To

1.The Subordinate Judge, Virudhunagar.

2.The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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JM/27.08.2019/3P/4C