

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Transfer C.M.P.No.51 of 2019 and
C.M.P. No.1718 of 2019

Revathi

...Petitioner

vs.

Srinath

...Respondent

Tr.C.M.P. filed under Section 24 of C.P.C., to withdraw the case in H.M.O.P. No.37 of 2018 on the file of Sub Court at Myladudurai and transfer the same to Sub Court at Kumbakonam by allowing the transfer petition.

For Petitioner : Mr.M.Pari

For Respondent : R.Marudhchalamurthy

O R D E R

The petitioner herein/wife has come forward with the present transfer civil miscellaneous petition, for transferring H.M.O.P. No.37 of 2018 pending on the file of Sub Court at Myladudurai and transfer the same to Sub Court at Kumbakonam.

2. It is submitted that, this court, vide order dated 10.01.2020 made in Tr.C.M.P. No.52 of 2019 has already directed transfer of H.M.O.P. No.11 of 2018 from the file of Sub Court, Mayiladuthurai to the file of Sub Court, Kumbakonam. The case that was transferred from Sub Court, Mayiladuthurai to Sub Court, Kumbakonam is a divorce petition filed by the husband. In the present case on hand, namely H.M.O.P. No.37 of 2018, the wife has sought for restitution of conjugal rights and that the matters have got to be tried together and that there cannot be any separate order in the issue.

3. Taking note of the submissions of both parties, and that already divorce petition has been transferred from Sub Court, Mayiladuthurai to Sub Court, Kumbakonam, H.M.O.P. No.37 of 2018 is also withdrawn from the file of Sub Court, Mayiladuthurai and transferred to the file of Sub Court, Kumbakonam, to be tried along with H.M.O.P. No.11 of 2018.

The Sub Court, Kumbakonam, is expected to conclude the trial, as expeditiously as possible, without adjourning the matter beyond 45 working days at any point of time, to bring the issue to a logical end.

4. Even though the respondent referred to a CrI. O.P. No.449 of 2018 filed for transferring D.V.C. No.1 of 2018, as the matter is not before this court, it is open to the petitioner to file a necessary petition under Article 227 of the Constitution of India, to transfer the DVAC matter to any one of the courts mentioned under Section 26 of the Protection of Women from Domestic Violence Act, so that all the three matters can be tried and disposed of.

5. For the sake of convenience, Sections 24 and 151 of CPC, Section 26 of D.V.Act, Section 482 of Cr.P.C. and Article 227 of the Constitution of India are extracted below:

Sections 24 and 151 of CPC read thus:

24. General power of transfer and withdrawal? (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage?

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and?

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn

(3) For the purposes of this section,?

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) the Court trying any suit transferred or

withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

151. Saving of inherent powers of Court? Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Section 26 of Protection of Women from Domestic Violence Act, 2005, reads thus:

26. Relief in other suits and legal proceedings - (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

Section 482 of the Criminal Procedure Code, reads thus:

482. Saving of inherent power of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Article 227 of the Constitution of India, reads thus:

227. Power of superintendence over all courts by the High Court.- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation

to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

6. Though Domestic Violence cases filed under the provisions of D.V.Act are civil in nature, the powers have been conferred to the Social Welfare Officer, who is empowered to file a complaint only before the jurisdictional Magistrate, based on which, the Criminal Courts get jurisdiction to try the civil matter. Taking note of Section 26 of D.V.Act, the powers should have been given to the Social Welfare Officer to make a complaint to other Courts mentioned under Section 26. But, unfortunately Courts cannot legislate and this Court can only suggest for amendment of the provisions in the light of the judgment of the Hon'ble Apex Court in the case of Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99 and the relevant paragraph is extracted hereunder:

"11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The

State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual work- man. In this connection we have one more suggestion to make. The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. This suggestion is worth considering. All this we are saying because we sincerely feel that the Central Act passed forty years ago needs a second look and requires a comprehensive amendment."

7. This Court is of the view that the Social Welfare Officer must be empowered to lodge a complaint to other Courts mentioned under Section 26 of D.V.Act than the one of the jurisdictional Magistrate. Since the powers have been delegated to the jurisdictional Magistrate to try the civil cases filed under the D.V.Act, the process of reunion is completely ruined. The Government should think of amending the provisions so as to empower the Social Welfare officer to prefer a complaint in the Family Courts or any other Civil Courts mentioned in Section 26 other than Criminal Courts to try civil cases, as these provisions make the matrimonial life into the one of moral obligation. By invoking the provisions of Sections 24 and 151 CPC, the matter pending in Civil Court or Family Court alone can be transferred to similar Courts in other districts and certainly not to Criminal Courts. So also, if any petition is filed under Section 482 Cr.P.C to transfer

a case, the Court can transfer the criminal case from one Court to another Court. The provisions of Sections 24 and 151 CPC or Section 482 of Cr.P.C. cannot empower cases to be transferred from Civil Court to Criminal Court or vice versa, even though the word 'proceedings' is used under Section 24 of CPC. The only recourse to transfer the DVAC cases to Family Courts from other Courts is by invoking the provisions of Article 227 of the Constitution of India, as it has got a superintendence power over Subordinate Courts. The object of DV Act must be to reunite couples by protecting the interest of women and in the guise of protecting women, there should not be any breakup of sacramental relationship. If a woman approaches a Criminal Court, the tendency of the husband and his family members is that they are treated as criminals, without realising the fact that it is only civil in nature. When they are made to stand along with criminals, the relationship between the spouses gets strained and the question of reunion is next to impossible. The woman, who is approaching the Criminal Court makes her lawyer and her husband's lawyer lucrative at the cost of the husband's money and whoever succeeds in the matter pertaining to matrimonial disputes, ultimately the result is one and the same viz., the family life is ruined.

8. The Transfer Civil Miscellaneous Petition is allowed as indicated above. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(Asr)

To :

1. The Sub Court, Mayiladuthurai.
2. The Sub Court, Kumbakonam.

+1cc to Mr.R.Marudhchalamurthy, Advocate SR.12289

Tr.C.M.P.No.51 of 2019 and
C.M.P. No.1718 of 2019

JP(CO)
CB(27/05/2020)