

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.150 of 2020

Divya
D/o Sakthivel

... Petitioner

-VS-

Sivajothi
S/o late A.Mageswaran

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.190 of 2019 on the file of the Hon'ble Subordinate Judge, Poonamallee and transfer the same to the Subordinate Court at Tirunelveli.

For Petitioner :: Mr.R.Rajesh Vivekananthan

For Respondent :: No appearance

ORDER

Heard learned counsel for the petitioner through video conferencing due to the Covid-19 pandemic.

2. The petitioner, Mrs.Divya had married Mr.Sivajothi, the respondent herein on

4.9.2014 at Suprabha Mahal, No.22, Vellaiar Street, Mogappair West, Chennai, as per the Hindu rites and customs and were leading a happy life. However, due to the matrimonial problem between the petitioner and the respondent, the petitioner came down to her parental home. The reason being that the respondent's mother and his sister also joined hands with the respondent in encouraging the cruel activities. But after the birth of the child Pagalavan, the respondent was not even showing his smiling face and the couple have not even spent any happy moment thereafter. The respondent also at no point of time has shown his interest to take care of the child. Although the respondent is working in Perungalathur away from the residence, the mother of the respondent being a patient cannot take care of the child. In the meanwhile, the respondent filed the G.W.O.P.No.82 of 2019 on the file of the District Court, Tiruvallur. Aggrieved by the filing of the |G.W.O.P.No.82 of 2019 on the file of the District Court at Tiruvallur, the petitioner, who has been residing at Tirunelveli, filed Tr.C.M.P.No.319 of 2019 before this Court seeking for transfer of the said case and this Court also, in its order dated 20.9.2019, with the consent of the learned counsel for the respondent, transferred the matter to the District Court at Tirunelveli. When the G.W.O.P.No.82 of 2019 pending on the file of the District Court, Tiruvallur was transferred with the consent made by the respondent to be tried at the District Court, Tirunelveli, the respondent cannot once again file the H.M.O.P.No.190 of 2019 before the Sub Court, Poonamallee. Such a

conduct of the respondent clearly indicates his intention to further harass the petitioner and the small child.

2. I also find merits on the submissions made by the learned counsel appearing for the petitioner. When the G.W.O.P.No.82 of 2019 was filed on the file of the District Court, Tiruvallur, the petitioner came to this Court with Tr.C.M.P.No.319 of 2019 seeking transfer of the said case to the District Court at Tuticorin. But the learned counsel for the respondent consented for the matter to be transferred to the District Court at Tirunelveli and the said consent has been recorded as follows:-

“Learned counsel for the respondent submitted that instead of Tuticorin, it can be tried at Tirunelveli, as Tuticorin and Tirunelveli are at the same distance from Kulasekarapattinam.”

3. Based on the above consent order, the matter was transferred to the District Court at Tirunelveli. Therefore, the H.M.O.P.No.190 of 2019 ought not to have been filed again before the Sub Court, Poonamallee. Since the respondent has gone against the consent given for transfer of the G.W.O.P.No.82 of 2019 from the District Court, Tiruvallur to the District Court, Tirunelveli, this Court is inclined to allow the transfer civil miscellaneous petition with costs of Rs.25,000/- (Rupees twenty five thousand

only) payable by the respondent to the petitioner. Accordingly, the transfer civil miscellaneous petition stands allowed and the H.M.O.P.No.190 of 2019 is withdrawn from the file of the Sub Court, Poonamallee and transferred to the file of the Sub Court, Tirunelveli for disposal on merits with costs as quantified above. The learned Subordinate Judge, Tirunelveli is hereby directed to ensure the compliance as to payment of costs to the petitioner on the first or second date of hearing. Consequently, C.M.P.No.5074 of 2020 is closed.

Speaking/Non speaking order

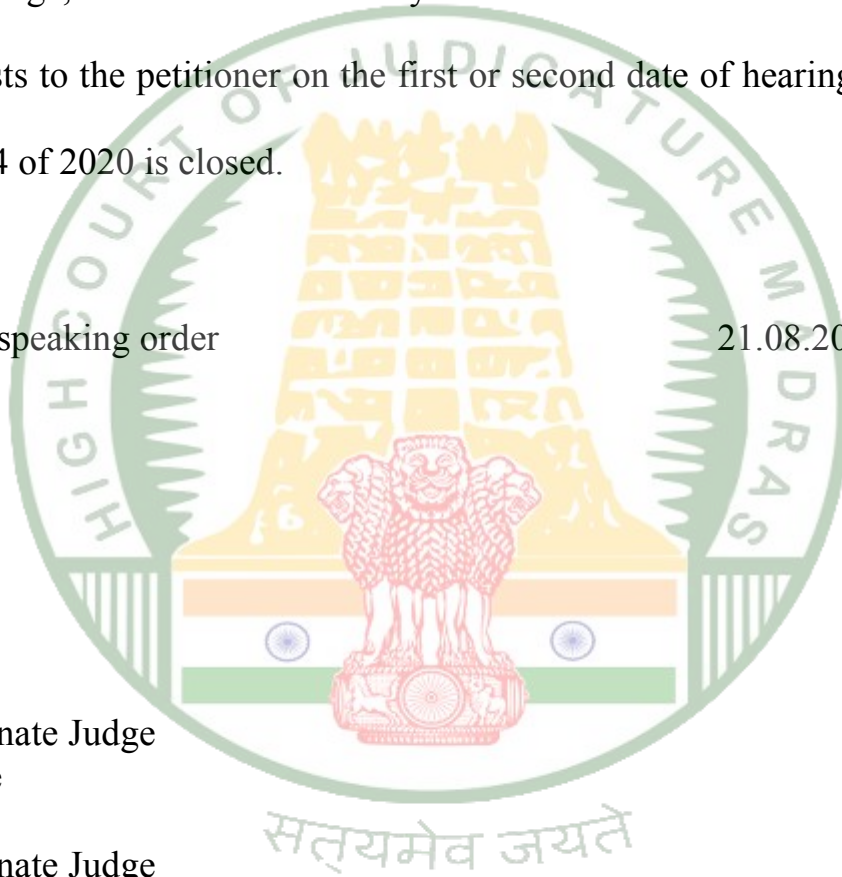
21.08.2020

Index : yes/no

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To

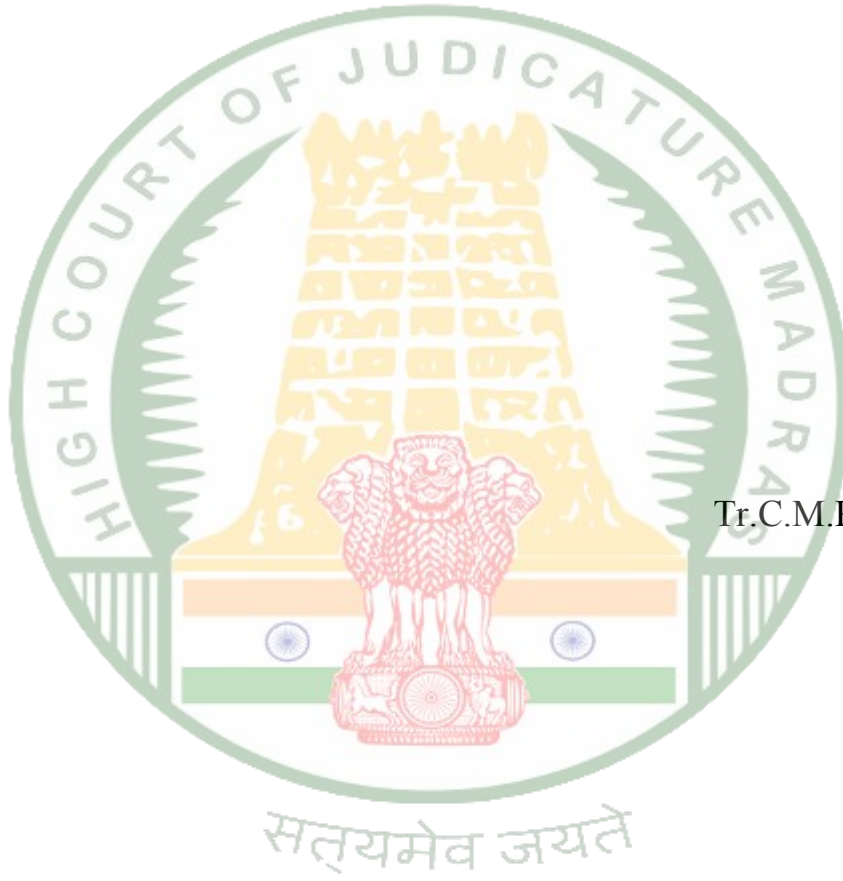
1. The Subordinate Judge
Poonamallee
2. The Subordinate Judge
Tirunelveli



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T.RAJA, J.

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