

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.105 of 2020

D.Saraswathi

.. Petitioner/ Respondents

-vs-

S.Manivannan

.. Respondent/Petitioner

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.441 of 2019 on the file of the District Family Court, Cuddalore and transfer the same to the Family Court at Chennai.

For Petitioner :: Mr.A.Laxmi Rajarathinam

For Respondent :: Mr.S.T.Raja for M/s Om Sai Ram

ORDER

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

2. The petitioner-Mrs.D.Saraswathi, Wife of Mr.S.Manivannan, the respondent herein has again come to this Court seeking withdrawal of the H.M.O.P.No.441 of 2019 filed by the respondent under Section 13(i)(i-a) of the Hindu Marriage Act from the file of the District Family Court, Cuddalore and transfer the same to the Hon'ble Family Court at Chennai.

3. Learned counsel appearing for the petitioner submitted that after the solemnization of marriage between the parties on 30.8.2009, as per the Hindu rites and customs at Pakshi R.Gopalan Chettiar Thirumana Mandapam, Koothapakkam in the presence of well wishers, elders and relatives of both the families, they were living together and they were also blessed with a female child on 9.7.2014, namely, M.S.Sree Parvathavardhini, who is now aged about 6 years and is under the care and custody of the petitioner/mother. But due to some misunderstanding, the parties are not living together now. However, the respondent earlier filed H.M.O.P.No.215 of 2018

before the District Family Court, Cuddalore for restitution of conjugal rights and aggrieved by the long distance, the petitioner came to this Court with Tr.C.M.P.No.598 of 2019 seeking for transfer of the said case from the District Family Court, Cuddalore to the file of the Family Court, Chennai. This Court, considering the fact that the petitioner had already filed D.V.C.No.73 of 2019 before the Additional Mahila Court, Egmore against the respondent, thought it fit to allow the transfer civil miscellaneous petition No.598 of 2019, by order dated 30.10.2019. Accordingly, the H.M.O.P.No.215 of 2018 was transferred to the Family Court, Chennai and the same is pending. When these two matters are pending, the respondent, to drag on the matter, has been wrongly advised to file H.M.O.P.No.441 of 2019 under Section 13(i)(i-a) of the Hindu Marriage Act before the District Family Court, Cuddalore, once again. When the H.M.O.P.No.215 of 2018 filed by the respondent for restitution of conjugal rights before the same Family Court, Cuddalore was already transferred, again filing the H.M.O.P.No.441 of 2019 for divorce by the respondent is thoroughly unfair. Therefore, having transferred the H.M.O.P.No.215 of 2018 from the District Family Court, Cuddalore to the Family Court, Chennai, it was pleaded that the present H.M.O.P.No.441 of 2019 may also be transferred to the said Court.

4. Learned counsel appearing for the respondent submitted that since the petition for restitution of conjugal rights filed by the respondent has already been transferred to the Family Court, Chennai, the petition for divorce may also be transferred with a direction to the Court below to dispose of the matters within a specified time limit.

5. This Court is unable to appreciate the peculiar stand taken by the respondent. Firstly, he filed H.M.O.P.No.215 of 2018 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. But after the said case was transferred to the Family Court, Chennai, taking a 'U' turn against his own stand, has filed H.M.O.P.No.441 of 2019 for divorce under Section 13(i)(i-a) of the Hindu Marriage Act again before the District Family Court, Cuddalore. That reflects the mala fide conduct of the respondent and he cannot be permitted to take a diametrically opposite stand now. Hence, the H.M.O.P.No.441 of 2019 is withdrawn from the file of the District Family Court, Cuddalore and transferred to the Family Court, Chennai for disposal on merits. However, for wasting the precious time of this Court, this Court directs the respondent to pay costs of Rs.50,000/- to the petitioner. The learned Family Court Judge, Chennai shall ensure the payment of

Rs.50,000/- by the respondent on the first date of hearing or subsequent date payable to the petitioner. With this direction, the transfer civil miscellaneous petition stands allowed. Consequently, C.M.P.No.3682 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judge, Family Court
Cuddalore District

2. The Judge, Family Court
Chennai.

(With a request to ensure the payment of cost imposed to the Respondent on the first date of hearing)

Tr.C.M.P.No.105 of 2020

MR(CO)
CB(23/09/2020)



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