

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.889 of 2019 and
CMP No.24382/2019

Chandrakala
W/o Eshwaran

.. Petitioner/Respondent

-vs-

Eshwaran
S/o late C.Pargunan

.. Respondent/Petitioner

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.188 of 2019 on the file of the Sub Court Coimbatore and transfer the same to any one of the Family Courts at Chennai.

For Petitioner :: Mr.G.Sudhagar

For Respondent :: Mr.G.Arivarason

ORDER

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

2. The petitioner-Mrs.Chandrakala, Wife of Mr.P.Eshwaran, the respondent herein has filed this transfer civil miscellaneous petition seeking withdrawal of the H.M.O.P.No.188 of 2019 from the file of the Sub Court at Coimbatore and transfer the same to any one of the Family Courts at Chennai.

3. Learned counsel appearing for the petitioner submitted that after the marriage was solemnized between the petitioner and the respondent on 22.2.2002 at Saraswathi Sadan Kalayana Mantap, Jayachamraj Nagar, Hubli, Karnataka with the blessings of both the elders of the respective families, the petitioner and the respondent were blessed with two daughters, namely, Sandhya and Kavya, who are now aged about 16 years and 10 years respectively. It was also pleaded that the respondent is working as a Wing Commander in the Indian Air Force at Sulur, Coimbatore and he started showing unpleasant behaviour. When the petitioner raised a question whether the respondent is

having an illicit affair with one lady called Sonia, since then, their relationship got strained and finally the petitioner had to come back to her parental home. Taking advantage of her separation, the respondent has filed the H.M.O.P.No.188 of 2019 before the Sub Court, Coimbatore with frivolous allegations against the petitioner. However, the petitioner wants to contest and prove that the aforementioned H.M.O.P.No.188 of 2019 has been filed with frivolous grounds. Therefore, the matter may be transferred to any one of the Family Courts at Chennai. Adding further, learned counsel for the petitioner also stated that the petitioner attended the first hearing of the case on 2.11.2019 before the Sub Court, Coimbatore after obtaining hand loan from her neighbours and thereafter, the case has been now and then posted. But the petitioner is not able to undertake a long journey from Chennai to Coimbatore. Therefore, considering the plight of the petitioner, the transfer civil miscellaneous petition may be allowed, he pleaded.

4. A detailed counter affidavit has been filed by the respondent. Learned counsel appearing for the respondent submitted that the transfer petition is not legally maintainable for various reasons. Firstly, when the respondent is working as a Wing Commander in the maintenance branch of Indian Air Force at Sulur, Coimbatore, in view of the tense situation being faced by the nation, it is not possible for him to take leave or permission from the authority to come and attend the hearing at Chennai. Secondly, the allegation made by the petitioner that she secured hand loan to attend the hearing at Coimbatore on 2.11.2019 is false. The reason being that the petitioner has also moved a petition before the Air Force Authority seeking maintenance and the authority, considering the case of the petitioner, by order dated 28.2.2020, has ordered a sum of Rs.42,900 per month to be paid to the petitioner from the month of March, 2020 and since then, she has been enjoying the same. However, her plea for award of maintenance to her daughters was refused, on the ground that she was not concerned with their maintenance, as admittedly, the daughters are presently living with the respondent and pursuing their studies in Coimbatore. When the respondent is receiving a gross salary of Rs.2,00,000/-, an award of Rs.42,900/- per month has been ordered to be paid and the said sum is also being received by the petitioner from the month of March, 2020, her prayer for transfer may be refused.

5. Learned counsel appearing for the petitioner, however, stated that he is not aware of the monthly payment of maintenance of Rs.42,900/- to the petitioner from March, 2020.

6. This Court has considered the rival submissions. Considering the fact that the respondent is working as a Wing Commander in the Indian Air Force, taking permission or obtaining leave from his office to attend the hearing at Chennai is impossible. Further, both the daughters of the respondent are pursuing their studies at Sulur, Coimbatore. Moreover, by the order dated 28.2.2020 passed under Section 9 (1) of the Air Force Act, the petitioner has been receiving the monthly maintenance of Rs.42,900/- with effect from March, 2020. Therefore, it is for the petitioner to work out the remedy for her appearance before the Sub Court at Coimbatore. Hence, finding no merits whatsoever, the transfer civil miscellaneous petition fails and it is dismissed. Consequently, C.M.P.No.24382 of 2019 is also dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

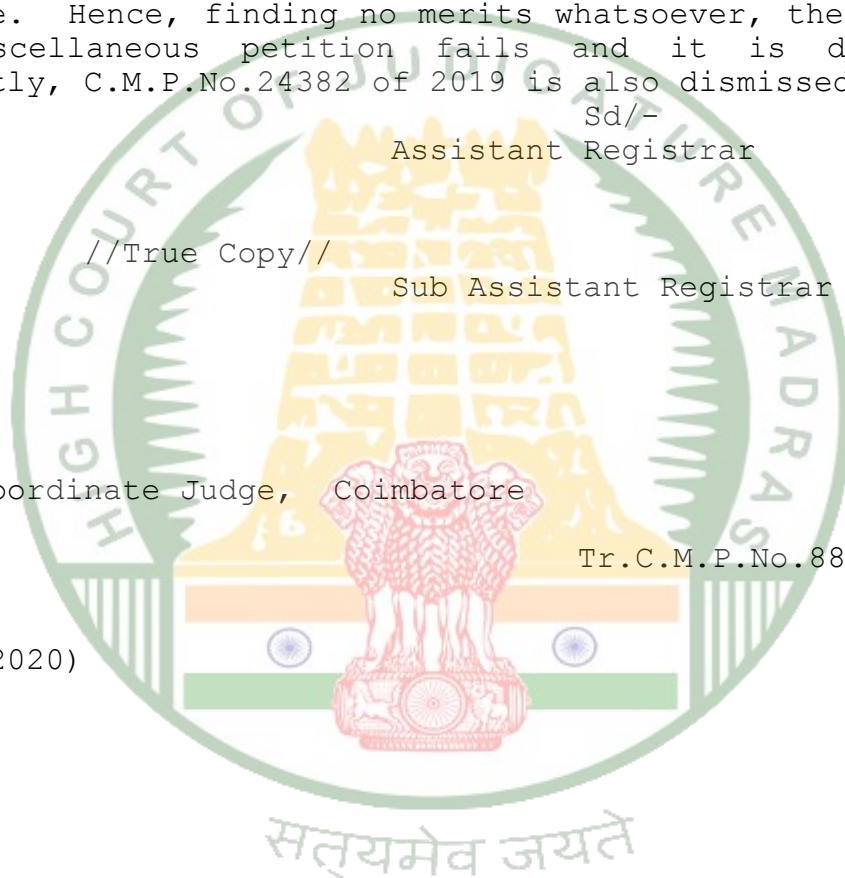
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To

1. The Subordinate Judge, Coimbatore

Tr.C.M.P.No.889 of 2019

NR (CO)
CB(21/09/2020)



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