

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Tr.C.M.P.No.913 of 2019
and C.M.P.No.24902 of 2019

B.Harniya

... Petitioner

vs.

R.Ragavan

...Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C. praying to withdraw F.C.O.P.No.235 of 2019 from the file of the Family Court Judge, Vellore and transfer the same to the file of the Sub Court, Poonamallee, Tiruvallur District.

For Petitioner : Mr.R.Krishnasamy

For Respondent : Mr.R.Arun Prasad

O R D E R

The present Transfer Civil Miscellaneous Petition has been filed seeking to withdraw the proceedings in F.C.O.P.No.235 of 2019 on the file of the Family Court, Vellore to the file of the Subordinate Court, Poonamallee, Tiruvallur District.

2. This Court, on 21.11.2019, has granted an order of interim stay. Learned counsel for the Petitioner submitted that, though he had communicated a copy of the said order to the Presiding Officer of the Family Court, Vellore, vide letter dated 28.11.2019, the Presiding Officer of the Family Court, Vellore had passed an ex-parte order of divorce on 30.12.2019. He also produced the postal cover dated 28.11.2019, which was received by the Family Court, Vellore on 29.11.2019 at 16.03.02 hours. He further submitted that, he received intimation from the Family Court, Vellore, asking the parties to appear for mediation in December 2019.

3. In this regard, Report was called for from the Presiding Officer of the Family Court, Vellore. By a communication dated 04.02.2020, she has stated that the case was adjourned to 18.10.2019, 18.11.2019, 28.11.2019, 07.12.2019 and to 12.12.2019. On 12.12.2019, the Petitioner was examined and the matter was reserved and an exparte order was passed on 30.12.2019.

4. Not being satisfied with the said Report, this Court called for a further Report from the Presiding Officer, Family Court, Vellore, with a direction to appear before this Court on 27.02.2020.

5. On 27.02.2020, the Presiding Officer, Family Court, Vellore appeared before this Court and submitted that, the communication sent by the Petitioner's counsel has not been brought to her knowledge and in that regard, a Memo has been issued to one Mrs.Rekha, who was working as a Head Clerk at the Family Court, Vellore, at that relevant point of time. She further submitted that, the order of interim stay passed by this Court reached the Registry of the Family Court, Vellore only in January 2020.

6. Today, when the matter was taken up for hearing, the Presiding Officer, Family Court, Vellore was present. Also, the said Mrs.Rekha, who is presently working at Judicial Magistrate Court - II, Tirupathur appeared before this Court and submitted that, the communication received from the Petitioner's Counsel was mistakenly put up in a different bundle and it was not intentional. She pleaded that, she may be pardoned and assured that, she will be careful in her duty in future.

7. Considering her plea, this Court accepts the apology tendered by Mrs.Rekha, with a warning to correct herself in her duties. This Court directed Mrs.Rekha to address a requisition letter to the Presiding Officer, Family Court, Vellore to the extent that, the Memo issued to her, may not be proceeded further. A copy of the letter addressed by Mrs.Rekha to the Presiding Officer, Family Court, Vellore, was produced before this Court and the same is taken on record.

8. In view of the same, the Presiding Officer, Family Court, Vellore is directed not to proceed further with the Memo issued against Mrs.Rekha, who was earlier working as Head Clerk in the Family Court, Vellore. The Presiding Officer, Family Court, Vellore is further directed to close the memo with a warning and intimate the closure of memo to the Presiding Officer with whom Mrs.Rekha is attached now.

9. When an interim order is passed by this Court, any decision taken by the Lower forum is void, and passing of an exparte order is nonest in the eye of law. Under Section 151 C.P.C., this Court is empowered to do complete justice, and hence the ex-parte order dated 30.12.2019 passed by the Presiding Officer, Family Court, Vellore is nonest in the eye of law, when the Respondent has no objection for the matter to be decided on merits. Accordingly, F.C.O.P.No.235 of 2019 is automatically restored on the file of the Family Court, Vellore.

10. Also, in view of the foregoing, it is not advisable for the Presiding Officer, Family Court, Vellore to continue to take up the case in F.C.O.P.No.235 of 2019 for hearing, any further. Hence, with the consent of the parties herein, invoking Section 24 C.P.C., proceedings in F.C.O.P.No.235 of 2019 now pending on the file of the Family Court, Vellore are ordered to be transferred to the file of the Subordinate Court, Poonamallee.

11. The Subordinate Court, Poonamallee is expected to take up F.C.O.P.No.235 of 2019 for trial, without adjourning the same beyond 15 days at any point of time and conclude the matter preferably within the outer limit of one year.

12. The Transfer Civil Miscellaneous Petition is allowed with the above directions and observations. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar - Writs

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Presiding Officer, Family Court, Vellore.
- 2.The Family Court, Vellore.
- 3.The Sub Court, Poonamallee, Tiruvallur District.
- 4.The Judicial Magistrate Court II, Tirupattur.

+1cc to Mr.V.Ajay Khose, S.R.No.17660.

+1cc to Mr.R. Arun Prasad, S.R.No.17656.

Tr.C.M.P.No.913 of 2019

VSI-2 (28.05.2020)

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