

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

TR.C.M.P.No.938 of 2019

and C.M.P.No.25631 of 2019

Jayvidhya Jeyaraj

rep by her Guardian & Father Mr.A.Jeyaraj

... Petitioner / Respondent

-vs-

Hari Hara Sankaran

... Respondent / Petitioner

PRAYER: Petition is filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.3488 of 2019 from the file of the III Additional Family Court, Chennai and transfer to the Hon'ble Family Court at Tuticorin or to any other Court having jurisdiction.

For Petitioner : Mr.C.Prabhakaran

For Respondent : M/s.S.Deepika

O R D E R

The Transfer Petition has been filed to transfer the case in H.M.O.P.No.3488 of 2019 pending on the file of the III Additional Family Court, Chennai to the file of the Family Court at Tuticorin or to any other Court having jurisdiction.

2. At the request of the learned counsel for the parties, the matter was taken up for hearing on 10.02.2020 in the Chambers and both the parties were present. On the said date, by consent of the parties, this Court had passed the following interim order:

"3. According to the petitioner / wife, she is working in a Bank for more than 10 years and her marriage with the respondent / husband was solemnized on 02.03.2017. The wife has stated that after the difference between them, she has been residing with her parents. She has further stated that she has been taking a medicine called "Sizdone" and the said factum has not been suppressed to her

husband at any point of time. Though she is perfectly normal and fit to lead the matrimonial life, her husband finds one reason or the other to break the marriage.

4. In reply, the husband has submitted that even prior to the marriage, her wife had been taking treatment for her mental block and suppressing her illness, her marriage with him was performed. He has further submitted that they have no issues and when they consulted with a Doctor for begetting a child, it was opined that the medicine which she is taking will disturb the process of pregnancy and the medicine cannot be stopped immediately, as the dosage has to be reduced slowly.

5. Though the husband has stated that her wife is taking the pill for her mental illness, both parties are unable to inform the exact name of the illness. The wife has stated that though she has some health problems, certainly, it is not related to mental illness.

6. At this juncture, this Court posed a question whether both parties are ready and willing to go for a Counselling, so that, each party may be given a counselling by the Counsellor, in order to resolve the differences between them. Both parties have agreed to go for counselling, stating that a suitable Counsellor may be suggested by the Court so that they will appear for counselling on the date prescribed by this Court or the Counsellor without fail.

7. In view of the above, this Court requests Dr. Shantha Kamath, Schizophrenia Research Foundation (SCARF), No.7A, North Main Road, Anna Nagar (West Extn.), Chennai 600 101 to give counselling to the parties herein preferably on 18.02.2020, and on further dates, if needed, and also ascertain whether the tablet being consumed by the wife will stand in the way of her matrimonial life. The Doctor is requested to send the outcome of the counselling in the form of a Report to this Court before 26.02.2020, to enable this Court arrive at a decision in this matter. The expenditure for the Counselling and the Doctor's fee, if any shall be borne by both parties in equal share.

8. Registry is directed to despatch a copy of this order before 13.02.2020 to Schizophrenia Research Foundation (SCARF), No.7A, North Main Road, Anna Nagar (West Extn.), Chennai 600 101 (Phone Nos.044-2615 3971 / 2615 1073) along with necessary papers pertaining to the case on hand, on or before 14.02.2020 and the parties can contact Mrs.Karpagavalli, Senior Co-ordinator of SCARF, regarding the date and time of appointment.

9. List this matter before this Court on 28.02.2020."

3. After examination of both the husband and wife, a report has been sent to this Court (the Addressee has been wrongly shown as III Additional Judge, Family Court, High Court, Chennai) and in the report, it has been clearly stated that the wife is a schizophrenic, suffering from serious mental illness.

4. In the meanwhile, the father of the petitioner has sent a letter to the Registrar General of this Court and the contents of the letter are extracted hereunder:

"Regarding the above, the Petitioner / Respondent submits the following views / stands for the interest of justice.

On 10.2.2020, on the Request of the Respondent / Petitioner's Advocate opportunity to be heard was provided by the High Court to the Respondent / Petitioner in the above case. But such opportunity was not given to me. Under circumstances, I submit my following views / stands according to Principles of Natural Justice.

The Petitioner / Respondent prefers Judgement in the above case."

5. When this Court posed a question to the learned counsel for the petitioner in respect of the letter, it was reported that he was not aware of the letter being sent by the father of the petitioner.

6. It is apposite to point out here that on 10.02.2020, when the husband had apprehended that the tablet, namely, Sizdone, being consumed by the wife will stand in the way of her matrimonial life (as the foetus got aborted once), the petitioner / wife has stated that the tablet is not meant for any mental illness and she is in a fit state of mind to beget a

child. She has also consented in front of her parents that she is ready to subject herself for any medical examination being suggested by this Court. Based on her consent, the petitioner / wife, including the respondent / husband were referred to Schizophrenia Research Foundation (SCARF), Chennai for examination, with a direction to the said Foundation to submit a report and the Doctor, after examination of both the husband and wife, has sent a report dated 24.02.2020 to this Court and opined as stated above. Therefore, the contents of the letter are baseless and though such false statement is offensive, entitling this Court to initiate criminal contempt against the father of the petitioner, this Court at this stage does not want to do so, taking into account of his age. It is no doubt true that it is his primary duty to safeguard the interest of his daughter and at the same time, it should always be remembered that truth alone triumphs and a man at the age of 72 should be a role model to youngsters.

7. Though the transfer petition has been filed by the wife through her guardian / father, the father cannot step into the shoes of the petitioner to tender evidence, as the respective parties alone are empowered to tender evidence to get along with the case. Even if the case on hand is tested on merits, it is admitted in Paragraph Nos.7 & 8 of the affidavit that the petitioner is working in the State Bank of India, Park Town Branch, Chennai and as per the provisions of Section 19(iii) of the Hindu Marriage Act, 1955, the matter has to be heard in a Court where the wife is residing on the date of presentation of the petition. The object of the legislation is very clear that the matter can be transferred to the place, where the wife resides and not to the place where her father resides and therefore, I find no merit and justification in the present petition and the petition is liable to be dismissed, as no genuine ground is made out for transfer of the case.

8. In view of what is stated herein-above, this Transfer Civil Miscellaneous Petition is dismissed. The III Additional Family Court Judge, Chennai is directed to take up the case in H.M.O.P.No.3488 of 2019 and proceed with the same on day today basis without adjourning the matter beyond seven (7) working days at any point of time and bring the issue to a logical end as expeditiously as possible, preferably within one year, i.e. on or before 01.04.2021.

9. The Trial Court, while deciding the issue in one way or the other, shall take into account the report of Schizophrenia Research Foundation (SCARF) and the said report shall form part of the record of the III Additional Family Court, Chennai. It is directed that at the time of evidence, the father of the petitioner herein shall not be permitted to be present either in

the Court or in the Chamber. In case the wife refuses to tender evidence, naturally, the Trial Court shall draw adverse inference against her.

10. Registry is directed to keep the original report of the Schizophrenia Research Foundation (SCARF) dated 24.02.2020 under safe custody and a copy of the same shall be sent to the III Additional Family Court, Chennai for reference. However, it is open to the parties to obtain a copy of the report by making due application either before the Registry of this Court or to the III Additional Family Court, Chennai. In case the respondent / husband seeks for any medical records of the petitioner from any of the hospital authorities prior to the report of SCARF, they are bound to issue the same, denial of which will amount to disobedience of the order of this Court. Similarly, it is open to the respondent / husband to call for records with regard to her leave particulars from the Bank where she is employed and also the details of her medical reimbursement claim in terms of the bipartite agreement and in such an event, the Bank Authorities shall issue the particulars sought for, to the husband without any delay.

11. Though the directions issued by this Court may appear beyond the purview of a Transfer Petition, this Court is empowered to mould the relief by invoking the inherent powers of this Court as provided under Section 151 of CPC to pass orders as it deems fit to meet the ends of justice or to prevent abuse of the process of the Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To:

1.The III Additional Family Judge, Family Court,
Chennai.

2.The Registrar Judicial, (Original Report being sent for
High Court, safe custody)
Madras.

(with a direction to communicate the SCARF Report to III
Additional Family Judge, Family Court)

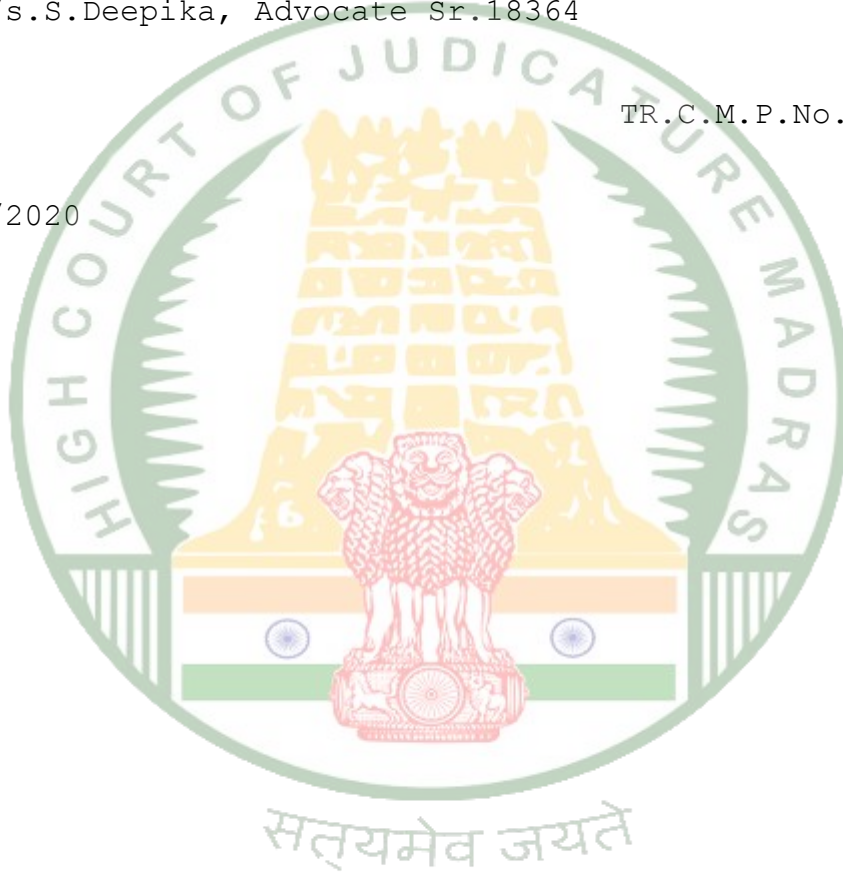
3.The Secretary/Incharge,
Schizobhrenia research,
Foundation (SCARF)
No.7A, North Main Road,
Anna Nagar, (West Extn.)
Chennai-600 101.

+1cc to Mr.C.Prabakaran, Advocate Sr.17949

+1cc to M/s.S.Deepika, Advocate Sr.18364

TR.C.M.P.No.938 of 2019

vd[co]
srg 06/03/2020



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