

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.48 of 2021
and
C.M.P.No.1951 of 2021

B.Abinaya .. Petitioner

vs.

N.Chidhambara Senapathi .. Respondent

PRAYER : Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the M.O.P.No.105 of 2020 pending on the file of the Hon'ble District Family Court, Puducherry and to transfer the same to the Hon'ble Subordinate Court at Poonamallee.

For Petitioner : Mr.K.Sampath
For Respondent : No appearance

O R D E R

The petition for transfer is filed to transfer M.O.P.No.105 of 2020 from the District Family Court, Puducherry to the Sub-Court, Poonamallee.

2. The marriage between the petitioner and the respondent was solemnized on 07.05.2018 as per the Hindu Rites and Customs. A female child born from and out of the wedlock and now aged about 2 years. The petitioner and the respondent developed difference of opinion and the petitioner is now residing separately along with her parents and with a child at Ambattur. The learned counsel for the petitioner states that she is unemployed and depending on her parents and she has to take care of the child, aged about 2 years and therefore, she is not in a position to travel from Poonamallee to Puducherry in order to defend the M.O.P.No.105 of 2020 filed by the respondent for restitution of conjugal rights. The petitioner/wife has already filed a petition for Dissolution of Marriage in H.M.O.P.No.112 of 2020, which is now pending before the Sub Court, Poonamallee.

3. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well

settled through the decisions 3 of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money,

the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

(iii) In a decision made in TR.CMP(MD)No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

''18.It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19 (iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.''

4. In view of the facts and circumstances, the M.O.P.No.105 of 2020 pending on the file of the District Family Court, Puducherry stands transferred to the Sub-Court, Poonamallee.

5. Accordingly, this Transfer Civil Miscellaneous Petition No.48 of 2021 stands allowed and M.O.P.No.105 of 2020 pending on the file of the District Family Court, Puducherry, is directed to be transferred to the Sub-Court, Poonamallee. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District Judge,
Family Court, Puducherry.

2.The Judge,
Subordinate Court, Poonamallee.

+1cc to Mr.K.Sampath, Advocate, S.R.No.12287.

AK-II(CO)
CSR 23.03.2021

Tr.CMP No.48 of 2021

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