

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.03.2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.125 of 2021
and
C.M.P.No.3932 of 2021

R.Janaki

.. Petitioner

vs.

Sangeeth Kumar

.. Respondent

PRAYER : Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in H.M.O.P.No.972 of 2020 pending before the Hon'ble Additional Family Court at Coimbatore, Coimbatore District and to transfer the same to the Hon'ble Sub Court, Avinashi, Tiruppur District, to try along with H.M.O.P.No.31 of 2020, pending on the file of the Hon'ble Sub Court, Avinashi at Tiruppur District.

For Petitioner : Mr.MA.P.Thangavel
For Respondent : Mr.M.Samuel Raja

O R D E R

The petition for transfer is filed to transfer H.M.O.P.No.972 of 2020 from the Additional Family Court, Coimbatore to the Sub Court, Avinashi, Tiruppur District.

2. The marriage between the petitioner and the respondent was solemnized on 19.10.2018 near Kovai Flower Market Street at Vinakayar Koil in Coimbatore District.

3. It is contended that the marriage was solemnized without informing the parents of the petitioner/wife. However, the parents of the respondent/husband participated in the marriage and against the wishes of the parents of the petitioner, the marriage was solemnized. Within few months, the petitioner/wife went to her parents house and now residing along with her parents. It is informed that it was a love marriage between the petitioner and the respondent and in view of the fact that the parents of the petitioner has not accepted the marriage, the petitioner left the matrimonial home and now along with her parents.

4. The petitioner and the respondent are present before this Court and even before this Court, the petitioner expressed that she is not willing to live with the respondent and she is not even ready to talk with the respondent. The petitioner made

it very clear that she is not at all interested for continuing the matrimonial relationship and therefore, the case is to be transferred as she resigned her job and now residing along with her parents at Avinashi, Tiruppur District.

5. The learned counsel for the respondent/husband made a submission that the respondent is willing for reunion and he is confident about the reunion. The respondent, who appeared before this Court has expressed that he is ready to go for Conciliation, if an opportunity is provided. However, the parties have to conduct the proceedings in a peaceful manner without affecting the rights of each other. The petitioner and the respondent are expected to behave as a law abiding citizen and each one is at liberty to exercise their right either to go for reunion or to oppose the reunion. However, they must co-operate for peaceful proceedings before the Family Court.

6. In view of the fact that the petitioner/wife is now residing along with her parents and she is now unemployed, the matrimonial dispute is to be transferred to the place of the petitioner/wife even as per the judgment of this Court and the principles laid down, which all are extracted hereunder:

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.'

7. In view of the facts and circumstances, H.M.O.P.No.972 of 2020 now pending on the file of the Additional Family Court, Coimbatore and H.M.O.P.No.31 of 2020 now pending on the file of the Sub Court, Avinashi, Tiruppur District are directed to be transferred to the Family Court, Tiruppur District for joint trial.

8. Accordingly, this Transfer Civil Miscellaneous Petition No.125 of 2021 stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judge, Additional Family Court, Coimbatore.
- 2.The Judge, Sub Court, Avinashi, Tiruppur District.
- 3.The Judge, Family Court, Tiruppur District.

+2cc to Mr.M.Samuel Raja, Advocate Sr.No.20992
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.NO.21247

akm/29.04.21 /4p-7c/

Tr.CMP No.125 of 2021