

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.168 of 2021
and
C.M.P.No.5100 of 2021

R.Madhurabharath

.. Petitioner

vs.

G.Balamurugan

.. Respondent

PRAYER : Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the F.C.O.P.No.65 of 2020 pending on the file of the Family Court, Ariyalur and transfer to Family Court, Chennai.

For Petitioner : M/s.Omsairam

For Respondent : Mr.M.Guruprasad

O R D E R

The petition for transfer is filed to transfer F.C.O.P.No.65 of 2020 from the Family Court, Ariyalur to the Family Court, Chennai.

2. The marriage between the petitioner and the respondent was solemnized on 30.04.2009 as per the Hindu Rites and Customs. The petitioner states that the respondent/husband is working as an Assistant Engineer in Public Works Department of the Government of Tamil Nadu and addicted to Alcohol and at the time of marriage, the petitioner/wife was pursuing her graduation B.Sc., B.Ed at Pondicherry. Even at that point of time, the respondent/husband used to drink alcohol and harass the petitioner.

3. However, all these allegations are to be adjudicated before the competent authority and cannot provide any finding in respect of those allegations. However, it is stated that the respondent/husband had contracted second marriage during the pendency of the divorce proceedings and a criminal complaint was filed by the petitioner for the offence of bigamy before Judicial Magistrate Court-I, Tanjore, which is pending in

C.C.No.183 of 2015. The petitioner states that her father is a retired Teacher and mother is working in SBI and it is transferable job and presently she is posted at Chennai and they have shifted their residence to Chennai. The petitioner/wife further states that she is unemployed and depending on her parents. Therefore, now she is living along with her parents at Chennai. Under these circumstances, she cannot travel alone to attend the Court at Ariyalur, which is 300 kms from Chennai and effectively contest the case.

4. The learned counsel for the respondent/husband states that even during the year 2014, a transfer petition was filed by the petitioner on the same ground that the father of the petitioner was working and the said petition was dismissed in the year 2014 and therefore, the present petition is also to be dismissed.

5. The fact remains that the case is pending for the past 8 years. The transfer petition filed in the year 2013, may not have any implications as far as the present transfer petition is concerned. The grounds raised in the present transfer petition is to be considered independently as the petitioner has clearly stated that her father is retired from the Post of Teacher and mother is working in SBI at Chennai. Thus, the present situation of the petitioner/wife is to be considered for the purpose of adjudication of the matrimonial disputes.

6. The petitioner/wife filed a Criminal Case in C.C.No.183 of 2015 for contracting second marriage with some other woman by the respondent. The respondent is working as an Assistant Engineer and therefore, as per the Tamil Nadu Government Servants Conduct Rules, contracting a second marriage is a misconduct and the Department is bound to initiate appropriate disciplinary proceedings and conduct an enquiry in respect of such allegations of second marriage during the subsistence of the first marriage. Admittedly, in the present case, the petition for divorce is pending and contracting a second marriage, if established, then it is a misconduct.

7. The learned counsel appearing on behalf of the petitioner/wife states that appropriate actions will be taken in this regard.

8. This Court is of an opinion that the petitioner/wife is at liberty to approach the competent authorities for appropriate relief in this regard.

9. As far as the present transfer petition is concerned, the petitioner is unemployed and now she is residing

with her parents. Her father is a retired Teacher and mother is working in SBI at Chennai. This being the factum, the principles as enumerated by this Court is to be considered, which reads as follows:

"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.''

10. In view of the facts and circumstances, F.C.O.P.No.65 of 2020 now pending on the file of the Family Court, Ariyalur is directed to be transferred to the Family Court, Chennai.

11. Accordingly, this Transfer Civil Miscellaneous Petition No.168 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

kak

To

1.The Judge,
Family Court, Ariyalur.

2.The Judge,
Family Court, Chennai.

+2cc to Mr.OM.Sriram, Advocate, S.R.No.21308, 21577

+1cc to Mr.H.Guruprasad, Advocate, S.R.No.21570

सत्यमेव जयते

Tr.CMP No.168 of 2021

GSM(CO)
KM(29/04/2021)

WEB COPY