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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

Tr.C.M.P. Nos.228 & 383 of 2021
and C.M.P. Nos.6548 & 8846 of 2021

P.Saravanarajan .. Petitioner in
Tr.C.M.P. No.228 of 2021

C.Vijaya .. Petitioner in
Tr.C.M.P. No.383 of 2021

Vs

C.Vijaya .. Respondent in
Tr.C.M.P. No.228 of 2021

Dr.P.Saravanarajan .. Respondent in
Tr.C.M.P. No.383 of 2021

PRAYER IN Tr.C.M.P. No.228 of 2021: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the HMOP No.25/2021 pending before the Subordinate Judge, Alandur, Chennai and transfer the same to the Family Court at Madurai for having joint trial along with HMOP No.781 of 2014 pending on the file of the Family Court, Madurai so as to settle all those pending family disputes with letter and spirit in view of the order passed by the Supreme Court of India, New Delhi in Special Leave to Appeal (Crl.) No. (S).7551 of 2019 against the order passed in Crl.O.P.No.28343 of 2017 (Maintenance Petition) by the High Court of Madras.

PRAYER IN Tr.C.M.P. No.383 of 2021: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw the H.M.O.P.No.781 of 2014 on the file of Family Court, Madurai and transfer the same to Subordinate Judge at Alandur.

For Petitioner : Mr.A.Selvam
in Tr.C.M.P. No.228 of 2021

For Respondent : Mr.D.Bennington
in Tr.C.M.P. No.228 of 2021



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For Petitioner : Mr.D.Bennington
in Tr.C.M.P. No.383 of 2021

For Respondent : Mr.A.Selvam
in Tr.C.M.P. No.383 of 2021

C O M M O N O R D E R

The husband has filed Tr.CMP.No.228 of 2021 where as the wife has filed Tr.CMP.No.383 of 2021.

2.The marriage between the petitioner and the respondent was solemnized on 04.09.1995 at Madurai. It is also admitted that the wife was gifted with a male child. The husband has filed HMOP No.781 of 2014 for divorce before the Family Court, Madurai and it is admitted that the petition is pending in Madurai. The wife has also filed HMOP No.25 of 2021 which is pending before the Subordinate Judge, Alandur, Chennai.

3.It is the case of the husband that the wife is neither an employee nor doing any job in Chennai. The wife has filed the petition only in 2021, even though the husband has filed the petition in 2014.

4.The case of the husband is that the wife is staying in Chennai temporarily only for the purpose of collecting the maintenance amount from the husband and that it will not be convenient for the wife to stay in Chennai.

5.This Court carefully considered the statements of facts and the affidavit filed in support of this petition. It is also admitted that the petition for transfer filed by the wife earlier was dismissed and that the dismissal order in the wife's petition has become final. It is seen that the petitioner and the respondent viz., the husband and wife have the permanent place of residence in Madurai. The wife is unable to give a single reason to stay in Chennai. Merely because the wife has come to Chennai for personal reasons, it cannot be taken that the permanent residence of wife is in Chennai. Having regard to the specific allegations made in the petition, this Court is unable to believe the case of wife that she has reasons to stay in Chennai. Though in the petition filed by the husband for divorce, the convenience of wife will be given preference, this Court is unable to apply the general rule for obvious reasons. It appears that the wife is staying in Chennai on her own and without any support from anybody. The wife is not expected to seek for transfer of the case to Chennai unless there are very good reasons and the contentions of the wife opposing the



petition filed by the husband have no bonafides. The Family Court at Madurai has jurisdiction to decide the husband's application for divorce. Similarly, the wife's petition filed before the Sub Court, Alandur in 2021 cannot be entertained at Chennai, where the husband has no business or place of residence.

6. Having regard to the peculiar circumstances in this case, this Court has no hesitation to transfer the proceedings in HMOP No.25 of 2021 pending before the Subordinate Judge, Alandur, Chennai and accordingly, it is hereby withdrawn and transferred to Family Court, Madurai, to be tried together along with HMOP No.781 of 2014.

7. Accordingly, the petition filed by the husband in Tr.CMP.No.228 of 2021 stands allowed and the petition filed by the wife in Tr.CMP.No.383 of 2021 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Subordinate Judge, Alandur, Chennai.

2. The Family Court, Madurai.

+1cc to Mr.M.Selvam, Advocate, S.R.No.31606

+2cc to M/s.S.P.Meenakshi Sundaram, Advocate, S.R.No.31216,31217

Tr.C.M.P. Nos.228 & 383 of 2021
and C.M.P. Nos.6548 & 8846 of 2021

JP-II(CO)
CB(05/08/2021)