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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.10.2021

Pronounced on : 22.11.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Tr.C.M.P.No.438 of 2021

and

C.M.P.No.11405 of 2021

S.Radhika

...Petitioner

Versus

E.Muthukumar

...Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw H.M.O.P.No.117 of 2019 from the file of the Sub-Court, Aruppukkottai, Virudhunagar District and transfer the same to the file of the Family Court, Vellore to be tried along with in F.C.O.P.No.141 of 2021.

For Petitioner : Mr.C.Rajaguru

For Respondent : Mr.Aloysius Raja Pragash

ORDER

[The Case has been heard through video conference]

The present Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.117 of 2019 from the file of the Sub-Court, Aruppukkottai, Virudhunagar District and transfer the same to the file of the Family Court, Vellore to be tried along with in F.C.O.P.No.141 of 2021.

2.The learned counsel for the petitioner submitted that after falling in love each other, both the petitioner and the respondent married and after marriage, the matrimonial dispute arose since the respondent herein started ill-treating the petitioner and also used to beat her and also developed illicit intimacy with other lady and whenever the petitioner enquired about the same, the respondent used to scold and beat her and she was subject to cruelty. He further submitted that the

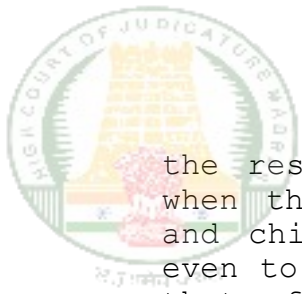


petitioner gave birth to a male child and despite the information of the same, the respondent did not turn up and take the petitioner and his child to the matrimonial home. Since the petitioner exceeded with the attitude of the respondent and unable to bear with the cruelty meted out in the hands of the respondent, she was constrained to move a petition in F.C.O.P.No.141 of 2021 before the Family Court, Vellore praying for dissolving the marriage. While so, the respondent with baseless averments filed petition in H.M.O.P.117 of 2019 praying for restitution of conjugal rights before the Sub-Court, Aaruppukottai. The learned counsel further submitted that at present, the petitioner is living with her parents at Vellore and she is entirely depending upon the income of the parents and since she has to look after her child, she is unable to travel about 480 kms all along from Vellore to take up the Court proceedings in H.M.O.P.No.117 of 2019 before the Sub-Court, Aaruppukottai. Hence, the learned counsel sought for transfer of the HMOP from the file of the Sub-Court, Aaruppukottai to the file of the Family-Court, Vellore.

3. On behalf of the respondent, a counter affidavit has been filed. The learned counsel for the respondent would submit that the petitioner left the matrimonial home and gone to her parent's house for celebrating a baby shower function and after delivery, the respondent was not allowed inside the house of the petitioner due to caste discrimination and the father of the petitioner warned the respondent stating that "we belong to Vanniyar Community" and "you belong to Schedule caste community" and strongly refused the respondent to allow inside the house and prevented him even to see his child. Thereafter, the petitioner did not turn up to the matrimonial home and refused to live with the respondent. The petitioner's father also threatened the respondent that to maintain the social status he may go to any extent. It is further submitted that the father of the petitioner is a highly influential person and it is unsafe to go the Court at Vellore to attend at hearing and the life of the respondent is under threat. In such circumstances, the respondent has filed a petition in H.M.O.P.No.117 of 2019 before the Sub-Court, Aaruppukottai for restitution of conjugal rights and the respondent is always ready and willing to live with the petitioner.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

5. It is not in dispute that both the petitioner and the respondent are not living together. The respondent has filed petition for restitution of conjugal rights while the petitioner filed for annulment of the marriage. It is the specific case of



the respondent that after delivery of baby by the petitioner, when the respondent visited the in-laws house to see his wife and child. He was prevented and not allowed inside the house even to see his child due to caste indiscrimination. It appears that after filing the divorce petition, the petitioner has not taken any steps either to join with the respondent or to permit the respondent to allow him inside her parental home.

6.Though, generally in the matter of seeking transfer of cases preference would be given to the women, but considering the facts and circumstances, this Court feels it appropriate to direct the Sub-Court, Aruppukkottai, Virudhunagar District not to insist upon the personal appearance of the petitioner/wife except during the enquiry stage or any day, her personal appearance is required.

7.Accordingly, with the above observation, this Transfer Civil Miscellaneous Petition is dismissed. However, the respondent is directed to pay all the travel and stay expenses of the petitioner and her companion for each and every occasion when she is required to attend the Court at Virudhunagar District. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

gbi

To:

1. The Sub-Judge,
Aruppukkottai,
Virudhunagar District.
2. The Family Court Judge,
Vellore.

+1cc to Mr.C.Rajaguru,Advocate, S.R.No.60136

+1cc to Mr.Aloysius Raja Pragash, Advocate, S.R.No.60230

Tr.C.M.P.No.438 of 2021

PCH[co]
NSK 06/12/2021