



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Tr.C.M.P.No.447 of 2021
and
C.M.P.No.11817 of 2021

M.Venkatesh

... Petitioner

Versus

S.Revathy

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.1440 of 2020 on the file of the Family Court No.II, Chennai and transfer the same to the file of the Family Court, Madurai.

For Petitioner : Mr. C. M. Mari Chellaiah Prabhu

For Respondent : Mr. K. Elango

ORDER

[The Case has been heard through video conference]

The present Transfer Civil Miscellaneous Petition is filed to withdraw the H.M.O.P.No.1440 of 2020 on the file of the Family Court No.II, Chennai and transfer the same to the file of the Family Court, Madurai.

2.The learned counsel for the petitioner submitted that the petitioner has also filed a petition for restitution of conjugal rights, in H.M.O.P.No.733 of 2020, before the Family Court, Madurai and the daughter aged about 9 years is also under the care and custody of the petitioner. It is further submitted that the petitioner is working in Postal Department at Madurai and he has to look after his aged mother who underwent open heart surgery apart from taking care of his daughter and hence, he sought for transferring the case from the file of the Family Court No.II, Chennai and transfer the same to the file of the Family Court, Madurai.



3.The learned counsel appearing for the respondent denied the contention put forth on the side of the petitioner and submitted that on the ground of cruelty, the respondent herein has filed H.M.O.P.No.1440 of 2020 on the file of the Family Court No.II, Chennai, for divorce and since the petitioner herein did not appear for the hearings, he was set ex-parte on 04.12.2020. It is further submitted that on 29.12.2020, the petitioner herein appeared before the Family Court, Chennai and submitted that he was going to file a petition to set aside the ex-parte order. Now, the case is posted on 26.10.2021 for appearance of the petitioner herein.

4.The learned counsel for the respondent submitted that the petitioner herein has filed a petition before the Family Court, Madurai for restitution of conjugal rights as a counter blast and sought for dismissal of this petition.

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

6.Admittedly the petitioner herein has filed a petition for restitution of conjugal rights before the Family Court, Madurai. If really the petitioner is interested for reunion he could have attended the case pending before the Family Court, Chennai. It is also an admitted fact that the petitioner is taking care of his daughter and his aged mother.

7.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.'

8. Therefore, to safeguard the interest and rights of the women, who are being subjected to harassment and cruelty, special preference conferred in favour of the women to try the cases the Court within whose jurisdiction she resides. Hence, this Court does not find any acceptable reason for transferring the H.M.O.P.No.1440 of 2020 from the file of the



Family Court No.II, Chennai and transfer the same to the file of the Family Court, Madurai.

9. In fine, this Transfer Civil Miscellaneous Petition is dismissed. Since the case before Family Court, Chennai is posted on 26.10.2021 for the appearance of the petitioner, the petitioner shall appear before the Court and file necessary petition for setting aside the ex-parte order. Considering the fact that the petitioner has to take care of his 9 years old daughter and aged mother who underwent heart surgery, the Family Court is directed not to insist upon the personal appearance of the petitioner/husband except during the enquiry stage or any day his personal appearance is required. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

gbi

To:

1.The Family Court No.II, Chennai.

2.The Family Court, Madurai.

+1cc to Mr.K. Elango, Advocate SR.No.47772

+1cc to Mr.S.Ganesh Kumar, Advocate SR.No.48088

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SRA(CO)
GMY(11/10/2021)