

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04-01-2021

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.664 of 2019

And

C.M.P.No.19137 of 2019

Priyankaa

..Petitioner

vs.

R.Arul Kumar

... Respondent

PRAYER : Transfer CMP is filed under Section 24 of the Civil Procedure Code to withdraw the HMOP No.1591 of 2019 on the file of the IV Additional Family Court, Chennai and transfer the same to the Family Court, Vellore to be tried along with FCOP No.158 of 2019.

For Petitioner : M/s.P.Pandiyaraj

For Respondent : Mr.S.Nambi Arooran

O R D E R

The relief sought for in the present Tr.CMP petition is to withdraw the HMOP No.1591 of 2019 on the file of the IV Additional Family Court, Chennai and transfer the same to the Family Court, Vellore, to be tried along with FCOP No.158 of 2019.

2. Wife is the petitioner in the present transfer CMP. The marriage between the petitioner and the respondent was solemnised on 09.11.2018 at Tirupathy. They commenced their family life with happy note and subsequently difference of opinion arose.

3. The allegations set out in the present petition for transfer is no further adjudication as the respective parties are bound to adjudicate the issues before the Trial Court by producing documents and evidences.

4. The present petition, being a transfer petition, is to transfer the case. The consideration is whether the petitioner is entitled for the relief as such sought for.

5. In Paragraph-9 of the affidavit filed in support of the transfer petition, the petitioner has stated that she was working in Chennai in order to meet out her livelihood. The respondent had not maintained her. She left the matrimonial home. The respondent filed a divorce petition. The petitioner has stated that she is not in a position to stay alone in Chennai. Thus, she resigned her job and went to her parent's home at Vellore. Under these circumstances, she is not in a position to come over to Chennai during every hearing and conduct the case at Chennai. Thus, the petitioner has chosen to file the present transfer petition.

6. The learned counsel for the respondent opposed the contentions of the learned counsel for the petitioner by stating that the petitioner is still working at Chennai and she has approached this Court with unclean hands. Though she has submitted some documents showing that she had resigned her job, the facts are incorrect and therefore, the transfer petition is liable to be dismissed.

7. This Court is of the considered opinion that the merits and demerits advanced by the respective counsel for the petitioner and the respondent, cannot be adjudicated with reference to the facts and circumstances. However, even at the time of filing of the transfer petition, the petitioner has stated that she had resigned her job and now she is living along with her parents at Vellore.

8. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well settled through the decisions 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.'

In view of the principles laid down and considering the facts and circumstances, the petitioner is entitled for the relief.

9. Accordingly, this Transfer Civil Miscellaneous Petition No.664 of 2019 stands allowed and H.M.O.P.No.1591 of 2019 pending on the file of the IV Additional Family Court, Chennai is directed to be transferred to the Family Court, Vellore and to be tried along with FCOP No.158 of 2019. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

svn

Sub Assistant Registrar

To

1. The IV Additional Judge,
Family Court,
Chennai.

2. The Judge,
Family Court,
Vellore.

Tr.CMP No.664 of 2019

ajs(CO)
rv(05/02/2021)



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