

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-01-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P.NO.794 OF 2019

AND

C.M.P.NO.22318 OF 2019

R.Vimala

.. Petitioner

vs.

V.Tamilselvan

.. Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code to withdraw and transfer the FCOP No.545 of 2015 on the file of the Family Court, Salem to the file of the Family Court, Coimbatore.

For Petitioner	:	Mr.T.N.Murali Moghan
For Respondent	:	No Appearance

O R D E R

The petition for transfer is filed to transfer FCOP No.545 of 2015 from Family Court, Salem to Family Court, Coimbatore.

2. Marriage between the petitioner and the respondent was solemnised on 30.09.1990 as per Hindu Rites and Customs. A female child was born out of the wedlock and now the girl child completed Engineering Graduation and living along with the petitioner.

3. The petitioner states that the respondent deserted her on 02.06.2015 and thereafter filed a petition for divorce in FCOP No.306 of 2015 before the Family Court, Salem. The petitioner filed a petition for restitution of conjugal rights in FCOP No.545 of 2015. I.A.No.679 of 2015 was filed in FCOP No.306 of 2015 for interim maintenance. The Family Court, Salem granted an interim maintenance of Rs.20,000/- per month and the said amount was subsequently modified by the High Court in CMA No.1096 of 2016 as Rs.15,000/- per month.

4. The contention of the petitioner is that the respondent is deliberately not paying the interim maintenance of Rs.15,000/- per month ordered by this Court. The arrears of maintenance as on the date of filing of the present transfer petition was about Rs.97,500/-. To recover the said arrears of maintenance, the petitioner filed REP No.1 of 2018 in I.A.No.679 of 2015 in FCOP No.306 of 2015 before the Family Court, Salem.

5. The petitioner states that due to some personal problems, the daughter is also unmarried and in order to get employment to her daughter and considering the future career of her daughter, the petitioner has shifted her residence from Salem to Coimbatore. Now she is residing at Coimbatore along with her unmarried daughter. The petitioner is not having any independent source of her own and she is suffering from ill-health and diabetic and the respondent also not paying the maintenance punctually. Therefore, she filed the present transfer petition.

6. This Court is of the considered opinion that the petitioner is now residing at Coimbatore along with her unmarried daughter. The respondent is not paying the interim maintenance punctually and even as of September 2019, the arrears of maintenance to be paid to the petitioner by the respondent is Rs.97,500/-. Under these circumstances, it is a fit case for transferring FCOP No.545 of 2015 from the Family Court, Salem to the Family Court, Coimbatore.

7. 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.'

8. In view of the facts and circumstances, the FCOP No.545 of 2015 now pending before the Family Court, Salem stands transferred to the Family Court, Coimbatore.

9. Accordingly, this Transfer Civil Miscellaneous Petition No.794 of 2019 stands allowed and FCOP.No.545 of 2015 pending on the file of the Family Court, Salem is directed to be transferred to the Family Court, Coimbatore. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Judge,
Family Court,
Salem.
2. The Judge,
Family Court,
Coimbatore.

+1cc to Mr.T.N.Murali Moghan, Advocate, S.R.No.139

Tr.CMP.No.794 of 2019

AJS (CO)
CS/05/02/2021