



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 17.09.2021

**CORAM:**

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

**Tr.C.M.P. (MD) No.12 of 2021**

**and**

**C.M.P (MD) No.297 of 2021**

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Jeyalakshmi

... Petitioner

Vs.

Mariappan

... Respondent

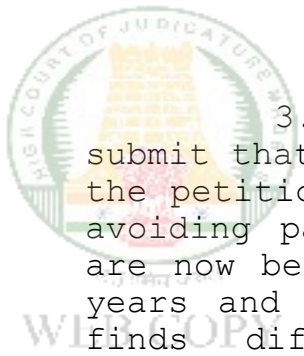
**PRAYER:** Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.125 of 2020 on the file of the Hon'ble Family Court, Srivilliputtur and transfer the same to the Hon'ble Family Court, Madurai.

For Petitioner : Lakshmi Gopinathan  
for M/s.Polax Legal Solutions  
For Respondent : Mr.R.Karunanidhi

**O R D E R**

The present Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.125 of 2020 from the file of the Family Court, Srivilliputtur and transfer the same to the file of the Family Court, Madurai.

2.The learned Counsel for the petitioner would submit that the marriage between the petitioner and respondent was solemnized on 06.11.2002 as per the Hindu rites and customs. The marriage was an arranged marriage and all the expenses were met out by the parents of the petitioner. Out of the wedlock, the petitioner and the respondent have two children, namely, Mahalakshmi, aged about 17 years and Arun, aged about 12 years, who are respectively studying 12<sup>th</sup> and 8<sup>th</sup> standard. The respondent, who is a Conductor in the Transport Corporation, used to physically harass the petitioner and her children and thereby, the petitioner was forced to leave the matrimonial home and she is presently residing with her widowed mother, aged about 78 years. The petitioner has filed D.V.O.P.No.16 of 2019 on the file of the Additional Mahila Court, Madurai and after one year the DVOP was posted for trial. In the mean time, in order to avoid payment of maintenance to the petitioner and her children, the respondent has filed H.M.O.P No 125 of 2020 on the file of the Family Court, Srivilliputhur, seeking for restitution of conjugal rights.



3.The learned Counsel for the petitioner would further submit that the real intention of the respondent is not to join with the petitioner and the said petition is filed only with a motive of avoiding payment of maintenance. The petitioner and her children are now being under the care of her mother, who is aged about 75 years and the petitioner is aged about 33 years and thereby, she finds difficult to travel all the way from Madurai to Srivilliputhur, which is 80 kilometer far away from her residence. Further, the respondent is working in the Transport Corporation and it is not difficult for him to travel from Srivilliputhur to Madurai.

4.The learned counsel for the petitioner would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration of the inconvenience and the comparative hardship faced by the petitioner/wife and children, had directed to transfer the cases to be tried in Courts near to the petitioner. Thereby, he seeks for transfer.

5.The learned counsel for the respondent would submit that the respondent is ready and willing to join with the petitioner, whereas, the petitioner is adamant and she is refusing to come and live with the respondent.

6.Heard the learned counsel on either side and perused the material available on records

7.The Hon'ble Apex Court in the case of **Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap** reported in **(2016)14 SCC 356** held that **while deciding the transfer of matrimonial proceedings, comparative hardship faced by the wife has to be taken into account.** Further, in the case of **Amitha Shah Vs. Virendar Lal Shah**, the Hon'ble Supreme Court reported in **(2003)10 SCC 609** held that **the convenience of the wife must be taken into account while deciding the petition for transfer.**

8.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner and also considering the fact that the respondent, who is a Conductor working in the Transport Corporation, this Court finds that it is not difficult for him to travel from Srivilliputhur to Madurai and therefore, HMOP. No.125 of 2020 is withdrawn from the file of the Family Court, Srivilliputhur and transferred to the file of Family Court, Madurai, for disposal as per law. The Family Court, Srivilliputhur, is directed to transmit the papers to the file of the Family Court, Madurai, forthwith. The learned Judge, Family Court, Madurai, is directed to dispose of the same on merits and in accordance with law as expeditiously as possible.



9. In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Family Court,  
Srivilliputhur

2. The Family Court,  
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate ( SR-29652[F]  
dated 20/09/2021 )

Tr.C.M.P. (MD) No.12 of 2021  
17.09.2021

ES (CO)

KB(24.09.2021) 3P 4C