



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.139 of 2021

and

C.M.P. (MD)No.2646 of 2021

Hema ... Petitioner
-vs-
Mithun Kumar ... Respondent

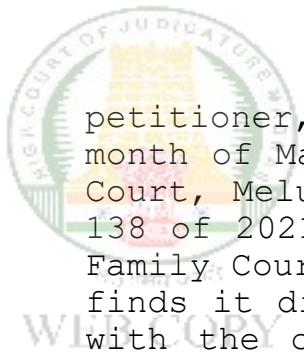
PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the petition in HMOP No.27 of 2020 on the file of the Sub Court, Melur and to transfer the same to the Family Court, Trichy filed by the petitioner herein.

For Petitioner : Mr.V.Illanchezian
For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the petition in HMOP No.27 of 2020 on the file of the Sub Court, Melur and to transfer the same to the Family Court, Trichy filed by the petitioner herein.

2. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 03.03.2019 at Seenupandi Marriage Hall, Melur and the reception was held in Amman Marriage Hall, PeriyamilaguParai, Trichy. At the time of marriage the parents of the petitioner gifted 22 ^{1/2} gold jewels, 1/2 sovereign ring to the respondent, two sovereigns of Mangalyam, Silver articles, house hold articles and all other appliances. The petitioner and the respondent started their matrimonial house at the village of the respondent and thereafter they shifted to Bangalore in a rental house at Alsur and lived there till 2019. The petitioner got conceived during the month of June 19 and thereafter the respondent brought the petitioner and left at the parental house so that her parents may took care of her and they also invited the respondent and their family members to attend the valaikappu function, but they did not attend the function. Whiles, on 15.02.2020 the petitioner delivered a male child. Though information was given to the respondent and his family members none of them visited the house of the petitioner to see the petitioner and her son. The parents of the petitioner have made several attempts to unite the petitioner and her child with the respondent, all the steps ended in vain. However to the shock and surprise of the



petitioner, the respondent had filed divorce petition during the month of March 2020 in HMOP No. 27 of 2020 on the file of the Sub Court, Melur. The petitioner has also filed a petition in HMOP No. 138 of 2021 seeking for restitution of conjugal rights before the Family Court, Trichy. The petitioner is aged about 22 years and she finds it difficult to travel all the way from Trichy to Melur along with the child. The respondent is presently employed at Bangalore and living there and it is not difficult to him to travel to Trichy to attend the Court. Taking into consideration the comparative hardship faced by the petitioner/wife the petition is filed seeking for transfer HMOP 27 of 2020 pending on the file of the Sub Court, Melur to the file of the Family Court, Trichy to be tried along with HMOP No.138 of 2021.

3. Heard the learned counsel for the petitioner. This Court had already permitted the petitioner to serve notice on the counsel for the respondent before the trial Court and notice is also served on the counsel and his name printed in the cause list. There is no representation for the respondent.

4. The petitioner is the wife she has filed a petition seeking for restitution of conjugal rights in HMOP No.138 of 2021 which is pending on the file of the Family Court, Trichy. The respondent/husband had filed petition for divorce which is pending in HMOP No. 27 of 2020 on the file of the Sub Court, Melur.

5. The Hon'ble Apex Court in the case of **Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap** reported in (2016)14 SCC 356 has 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**, reported in (2003)10 SCC 609 the Hon'ble Supreme Court has held that **the convenience of the wife and moreso of the child must be taken into account while deciding the petition for transfer..**

6. This Court is of the opinion that in the interest of justice both the cases can be tried by the Family Court, Trichy.

7. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP No. 27 of 2020 is withdrawn from the file of Sub Court, Melur and transferred to the file of Family Court, Trichy, for disposal as per law. The learned Subordinate Judge, Melur, is directed to transmit the papers to the file of the Family Court, Trichy, forthwith. The Family Court, Trichy, is directed to dispose H.M.O.P.No.27 of 2020 and HMOP No.138 of 2021 on merits and in accordance with law as expeditiously as possible.

8. 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)

aav

To:

1.The Sub Court, Melur

2.The Family Court, Trichy

+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-26806[F] dated 19/08/2021

Tr.C.M.P. (MD) No.139 of 2021

and

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MMS (CO)

KB (27.08.2021) 3P 4C