



WEB COPY

Tr.C.M.P(MD) No.176 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.176 of 2021 and
CMP(MD).No.3343 of 2021

B.Priya ... Petitioner/Respondent

-vs-

R.Dhanasekaran @ R.Ganesh ... Respondent/Petitioner

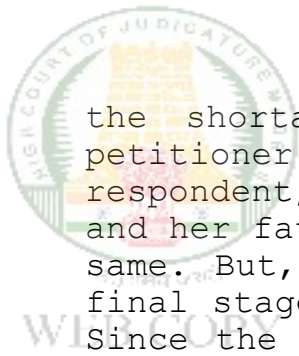
PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case on the file of the Family Court, Cuddalore in H.M.O.P.No.52 of 2021 and transfer the same to the learned Family Court, Trichy.

For Petitioner : Mr.G.Balu Mahendran

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in H.M.O.P.No.52 of 2021, on the file of the Family Court, Cuddalore and to transfer the same to the file of Family Court, Trichy.

2. The learned counsel for the petitioner would submit that the petitioner is the wife of the respondent. The marriage between the petitioner and the respondent was solemnized on 15.11.2015 at Perumal Temple, Thiruvanthipuram, Cuddalore District, as per Hindu Rites and Customs. At the time of marriage, the parents of the petitioner offered six sovereigns of gold jewels to the respondent and 34 sovereigns of gold jewels to the petitioner. The petitioner has completed MBBS Course in Russia in the year 2010 and she has been working as a Doctor in "ABC" Hospital at Annamalai Nagar, Trichy. The respondent was working as an Assistant Engineer in Sharja Electricity and Water Authority at Waist Power Station Branch at Sharja and earning a sum of Rs.2,00,000/- per month. After marriage, in the month January 2016, the petitioner got Visa and went to Sharja along with the respondent. Due to natural climatic conditions in Sharja, the petitioner fell sick and she was unable to conceive. She came to India for taking treatment for fertility and during the period of treatment also she returned to Sharjah to stay with the respondent. During the time, the attitude of the respondent changed and he forced the petitioner to return to India for taking further treatment. The petitioner's father had spent more than Rs.3,00,000/- for fertility treatment, despite that the petitioner did not conceive. Meanwhile, the respondent constructed a new house at Adithya Nagar, Kondur, Cuddalore District and due to



the shortage of funds, the respondent used the jewels of the petitioner for construction work. Later, on the compulsion of the respondent, she took treatment for IUI at OASIS Hospital at Chennai and her father had spent an additional sum of Rs.3,50,000/- for the same. But, the respondent refused to continue the treatment at the final stage and thereby, the second attempt also ended in failure. Since the petitioner was unable to conceive, the respondent abused her and had driven her out of the matrimonial home and that the petitioner is now staying with her parents at Trichy. On 05.02.2011, the parents of the petitioner along with relatives went to the respondent's house to talk about the medical treatment, but, the parents of the respondent abused them in filthy language and also given a false complaint against them before the Town Police Station. When the petitioner attempted to contact the respondent through phone, he refused to attend the calls of the petitioner. The petitioner wanting to live with the respondent, filed a petition seeking restitution of conjugal rights in HMOP.No.152 of 2021 before the Family Court, Trichy. As a counter blast, the respondent has filed HMOP.No.152 of 2021 for divorce before the Family Court, Cuddalore. The respondent has not returned the jewels or dowry given to him. However, he has made a false allegation against the petitioner and his family members. The HMOP.No. 52 of 2021 was posted for hearing on 09.03.2021 and the petitioner along with her family members attended the hearing on that date, but, the respondent has not appeared and hence, the matter is adjourned. Though the petition for divorce has been filed at Cuddalore, the respondent is still working at Sharja. After having filed the case, the respondent has not turned up before the Court.

3. The learned counsel for the petitioner would further submit that the distance between Trichy and Cuddalore is around 200 Kilometers and that the petitioner finds it difficult to travel from Trichy to Cuddalore to attend each and every hearing in HMOP.No.52 of 2021 on the file of the Family Court, Cuddalore. Further, the petition filed by the petitioner in HMOP.No.152 of 2021 also pending. He would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration the convenience and the comparative hardship faced by the petitioner/wife had directed to transfer the cases to be tried in Courts near to the petitioner. Thereby, he seeks for transfer.

4. Heard the learned counsel for the petitioner. Notice sent to the respondent returned with an endorsement as "unclaimed" and the proof has also been filed in respect of the private notice. As per the direction of this Court, notice has also been served to the counsel, who appeared for the respondent before the lower Court. Despite service of notice therein, no representation for the respondent.



5.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.**

6.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP.No. 52 of 2021 is withdrawn from the file of the Family Court, Cuddalore and transferred to the file of Family Court, Trichy for disposal as per law. The Family Court, Cuddalore, is directed to transmit the papers to the file of the Family Court, Trichy forthwith. The Family Court, Trichy is directed to club the case in HMOP.No.52 of 2021 along with HMOP.No.152 of 2021 together and dispose the same on merits and in accordance with law as expeditiously as possible.

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

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

trp

To:

1. The Family Court, Trichy.
2. The Family Court, Cuddalore.

Tr.C.M.P. (MD) No.176 of 2021 and
CMP(MD) .No3343 of 2081
08.09.2021

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