



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.251 of 2021

and

C.M.P. (MD)No.4877 of 2021

WEB COPY

V.Aishwarya

... Petitioner

-vs-

K.Sharath Prasath

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the HMOP No.370 of 2020 on the file of the Sub Court, Tambaram and transfer the same to the Sub Court, Thoothukudi District.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the HMOP No.370 of 2020 on the file of the Sub Court, Tambaram and transfer the same to the file of the Family Court, Thoothukudi.

2. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 27.08.2015 at Kovilpatti . At the time of marriage the parents of the petitioner had given 25 sovereigns of gold jewels and cash of Rs.3,50,000/- as demanded by the parents of the respondent. The respondent is working in the HSBC Bank and earning Rs.60,000/- per month. At the time of marriage the petitioner had not completed her under graduate degree and that her husband had ensured her that he will help her to continue her studies after marriage at his own expenses. When the petitioner was in the matrimonial home the respondent and his family members compelled her to take up a job. In the meanwhile the petitioner got conceived and since she was feeling weak and she was unable to go to job, whereas the respondent and his parents has compelled the petitioner to continue her job, as a result she suffered miscarriage. Thereafter she was abused verbally and mentally for miscarriage by the respondent and his family. The respondent and his family used to tease her and the petitioner was also bearing the torture given by them. Thereafter she got conceived for second time and delivered a female child on



09.11.2016. Since the child was female child the respondent and his family members started harassing her for giving birth to the female child and unable to bear the same the petitioner came back to her parental house at Ettayapuram. Due to the said mental depression her father fell ill and died on 29.12.2019. The petitioner under the impression that the respondent would come back and take her whereas he has filed a petition seeking divorce in HMOP No. 370 of 2020 under Section 13(1)(1-a) of the Hindu Marriage Act, 1955 before the Sub Court, Tambaram. The petitioner and the female child are now under the mercy of her widowed mother who is aged about 65 years and there is nobody else to take care of them. The petitioner finds it difficult to travel all the way to Chennai to attend the Court with the three years old suckling child and the petitioner is having nobody to take care of her at Chennai. Further the petitioner has also filed petition seeking maintenance and other relief in DVOP No. 11 of 2020 on the file of the learned Judicial Magistrate No. III, Thoothukudi. Though the case was filed during 2020, respondent did not attend the Court for one hearing date. He would further pray that this Court taking into consideration the hardships of the petitioner and also taking into consideration the convenience of the petitioner may order transfer of HMOP No. 370 of 2020 on the file of the Sub Court, Tambaram to the file of the Family Court, Thoothukudi.

3. Heard the learned counsel for the petitioner.

4. Mr.D. Peruman Saranyan, advocate had entered appearance on behalf of the respondent. When the matter is listed on 10.08.2021, there was no representation for the respondent and thereby this matter was listed under the caption for orders today. Even today, there is no representation for the respondent.

5. The petitioner is the wife. She has filed a petition seeking for transfer of HMOP No. 370 of 2020 on the file of the Sub Court, Tambaram to the file of the Family Court, Tuticorin. The petitioner was driven out of the matrimonial home and she has a female child on 09.11.2016. Her father passed away and she is under the care and custody of her widowed mother and there is nobody else to take care of them. The petitioner has to travel all the way from Tuticorin to Tambaram to attend the case which is about 600km away. She has a child and there is nobody to accompany her at Tambaram and nobody to take care at Tambaram.

6. 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.

7. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP No.370 of 2020 is withdrawn from the file of Sub Court, Tambaram and transferred to the file of Family Court, Thoothukudi for disposal as per law. The Sub Court, Tambaram, is directed to transmit the papers to the file of the Family Court, Thoothukudi. The Family Court, Thoothukudi, is directed to dispose HMOP No . 370 of 2020 on merits and in accordance with law as expeditiously as possible.

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

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To:

- 1.The Sub Judge, Tambaram, Chennai.
- 2.The Judge,Family Court, Thoothukudi.

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MGJ(25.08.2021) 3P 3C