



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No. 272 of 2021

and

C.M.P. (MD) No.5768 of 2021

WEB COPY

C.Jeba Soundari

... Petitioner/Respondent

Vs.

M.Krishnavel

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw HMOP No.30 of 2020 on the file of the Sub Court, Tiruchendur, Thoothukudi District filed by the respondent herein and the same may be transferred to the Family Court, Madurai.

For Petitioner : Mr.B.Fazil Kirmani

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in HMOP No.30 of 2020 on the file of the Sub Court, Tiruchendur, Thoothukudi District and transfer the same to the file of the Family Court, Madurai.

2.The brief facts in the petition is as follows:

The petitioner is the wife of the respondent. The marriage between the petitioner and the respondent was solemnized on 23.01.2017 at Arulmighu Kallazhagar Thirukovil, at Azhagarkovil as per Hindu rites and customs. After marriage they set up their matrimonial home at Neivilai, Nazreth at the house of the respondent along with his parents. The respondent was working in Saudi Arabia and on 05.04.2017 the respondent left the petitioner at matrimonial home and went abroad for his work. While at the matrimonial home, the parents-in-law of the petitioner started harassing her and caused severe mental agony claiming more dowry. They never permitted the petitioner to speak with the respondent over phone and when she expressed her inability to pay more dowry they started harassing her. Meanwhile the respondent came back from abroad and during that time the petitioner got pregnant. When she was pregnant the parents of the respondent did not take care of her. Later the respondent took the petitioner to Saudi Arabia to his place of employment and she lived with him happily for three months. On 10.06.2018, the petitioner was sent back to India all alone on the assurance that the respondent will take her back after delivery.



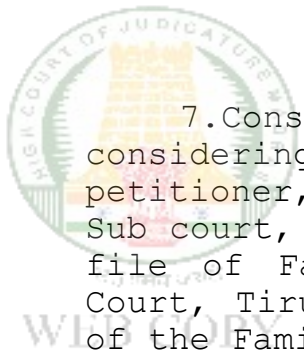
Believing the words of the respondent, the petitioner came to India. Further during her stay at her parents house the respondent did not bother to call her over phone and he did not answer to the telephone calls made by her. In the meantime the petitioner delivered a female child on 18.09.2018 and the same was informed to the respondent, but the respondent did not come to visit the petitioner or the child. The petitioner and his family members were under the fond hope that the respondent and his family members will take care of the petitioner and the child and take them back to the matrimonial home, whereas they did not even bother to visit the child or the petitioner. Thereafter the respondent had filed a petition for divorce in HMOP No 30 of 2020 on the file of the Sub Court, Tiruchendur. The petitioner was under the impression that her husband will appear before the Court without fail. The respondent appeared before the trial Court for one hearing and thereafter got repeated adjournments. The petitioner also came to understand that due to covid-19 pandemic situation the respondent is unable to go back to Saudi Arabia and is in his native place. The petitioner finds it very difficult to continuously travel with her child to Tiruchendur which is about 175kms one way.

3. The learned counsel for the petitioner would submit that the petitioner is having a small child. The petitioner and the child are not taken care by the respondent. The petitioner finds it very difficult to travel with her child from Madurai to Tiruchendur which is about 175kms one way and there is nobody to accompany the petitioner and her child to Tiruchendur. Further the respondent who is presently in India is not regularly appearing before the Court causing hardship to the petitioner.

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

5. Heard the learned counsel for the petitioner. He would also submit that the petitioner has taken steps to send notice and it is understood that the tapal sent to the respondent in the address given by him before the trial Court has been unserved stating reason 'unclaimed'.

6. 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***, reported in (2003)10 SCC 609 the Apex 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.30 of 2020 is withdrawn from the file of the Sub court, Tiruchendur, Thoothukudi District, and transferred to the file of Family Court,Madurai, for disposal as per law. The Sub Court, Tiruchendur, is directed to transmit the papers to the file of the Family Court, Madurai, forthwith. The Family Court, Madurai, is directed to dispose of the same 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 II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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, Madurai

2.The Subordinate Court, Tiruchendur

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