



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.254 of 2020

and

C.M.P. (MD) No.5693 of 2020

S.Sathya

... Petitioner/Respondent

-vs-

R.Vinothkumar

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in HMOP No.143 of 2020 on the file of the Family Court, Thanjavur and transfer the same to the file of Sub Court, Chidambaram. for further trial.

For Petitioner : Mr.M.Dinesh

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in HMOP No.143 of 2020 on the file of the Family Court, Thanjavur and transfer the same to the file of Sub Court, Chidambaram. for further trial.

2.The learned counsel for the petitioner would submit that the petitioner is the wife. The marriage between the petitioner and the respondent was solemnized on 05.04.2018 at V.S. Mahal, Kamarajar Market, Thanjavur as per their rites and customs. The respondent/husband was working as Sepoy in Indian Army. At that time of marriage the parents of the petitioner have offered 15 sovereigns of gold and provided necessary luxurious household articles to the respondent family which is worth more than Rs. 4 lakhs. After marriage the respondent and his family members had continuously harassed the petitioner and finally she was driven out from the matrimonial home. When the petitioner was driven out from the matrimonial home she was seven month pregnant and later she had delivered a male child on 24.06.2020. Whileso the husband had filed a petition for divorce in HMOP No. 143 of 2020 under Section 13(1) (iia)(ib) of the Hindu Marriage Act alleging cruelty. The petitioner is now staying with her parents at children at Chidambaram which is 150km away from the Thanjavur. He would further submit that the petitioner has filed HMOP No.91 of 2020 for restitution of conjugal rights which is pending on the file of the Sub Court, Chidambaram. He would also submit that the petitioner is under the mercy of her parents and she has to take care of the suckling child, which is one month old and she has to travel all the



way to Chidambaram from Thanjavur to attend the Court, thereby the present petition has been filed seeking to transfer the same.

3. Notice to the respondent sent as per the address in the petition in HMOP No 143 of 2020 has been returned stating that 'address insufficient'. Thereafter this Court had directed the petitioner to take notice on the counsel appearing before the trial Court. Private notice is also taken by the petitioner has been served and proof has been filed. There is no representation for the respondent.

4. 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 petition 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 has held that ***the convenience of the wife and more so of the child must be taken into account while deciding the petition for transfer.***

5. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, H.M.O.P.No.143 of 2020 is withdrawn from the file of Family Court, Thanjavur and transferred to the file of Sub Court, Chidambaram, for disposal as per law. The Family Court, Thanjavur, is directed to transmit the papers to the file of the Sub Court, Chidambaram, forthwith. The Sub Court, Chidambaram, is directed to dispose H.M.O.P.No.143 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 closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

To:

1. The Judge, Family Court, Thanjavur.
2. The Subordinate Judge, Chidambaram.

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