



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.10.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Tr.C.M.P. (MD) No.352 of 2021
and C.M.P. (MD) No.7156 of 2021

WEB COPY

P.Muthu Selvi

... Petitioner/Respondent

-vs-

P.Murugesan

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, 1908 to withdraw the HMOP No.29 of 2021 on the file of the Sub Court, Mudukulathur, and to transfer the same to the Family Court, Madurai.

For Petitioner : M/s.A.Amala

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the petition in HMOP No.29 of 2021, on the file of the Sub Court, Mudukulathur, and to transfer the same to the file of the Family Court, Madurai.

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 15.06.2014 at N.S. Sundara Gopala Mahal at Balarengapuram, Madurai, Madurai District, as per the Hindu Rites and Customs. After the marriage, out of the wedlock, the petitioner and the respondent were blessed with a girl baby on 25.07.2015 and the girl child is presently studying 2nd standard. The respondent was employed at Saudi Arabia and he used to visit home once in 2 years and also used to transfer an amount of Rs.15,000/- per month for maintenance of family. After sometime, the attitude of the respondent towards the petitioner changed and he had stopped sending money to the petitioner from 2017 onwards. Since the petitioner was unable to maintain herself and her daughter, she went to her parental home and is residing with them at Madurai. While so, during the month of June 2019, the respondent came from Saudi Arabia and visited the petitioner at her parental home and at that time there was a wordy quarrel, in which the respondent and the respondent's nephew assaulted the petitioner due to which the petitioner sustained injuries. The well-wishers in both family tried to amicably settle the matter between the parties and to reconcile the disputes between the parties, whereas, the respondent had ignored the same. Meanwhile, the respondent had filed HMOP No.29 of 2021 seeking for divorce. The petitioner had filed HMOP No.780 of 2021 before the Family Court, Madurai, seeking for Restitution of Conjugal Rights.



3.The learned counsel for the petitioner would further submit that the petitioner finds it difficult to travel all the way from Madurai to Mudukulathur along with her 6 years old daughter. The petitioner's HMOP No.780 of 2021 is also pending before the Family Court, Madurai, in order to avoid conflicting decisions and multiplicity of proceedings, both the cases have to be tried together. Further taking into consideration the convenience and the comparative hardship faced by the petitioner/wife, she has filed the present Transfer Civil Miscellaneous Petition seeking to transfer HMOP.No.29 of 2021, on the file of the Sub Court, Mudukulathur, to the file of the Family Court, Madurai.

4.Heard the learned counsel for the petitioner. Despite service of notice and name being printed in the cause list, there is 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 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.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP No.29 of 2021 is withdrawn from the file of the Sub Court, Muthukulathur, and transferred to the file of the Family Court, Madurai, for disposal as per law. The Sub Court, Muthukulathur, 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 transferred HMOP No.29 of 2021 along with HMOP No.782 of 2021 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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/ /2021

Sub Assistant Registrar(CS)



To:

- 1.The Sub Judge, Muthukulathur.
- 2.The Family Judge, Madurai.

+1 CC to M/s.A.AMALA, Advocate (SR-30904[F] dated 01/10/2021)

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CM(ASO) (CO) /RS (22.10.2021) 3P 4C