



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.12.2020

Delivered On : 19.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Tr.CMP (MD)Nos.281 & 282 of 2020

and

CMP. (MD)Nos.6273 & 6275 of 2020

WEB COPY

Tr.CMP (MD)No.281 of 2020

1.R.Vidhya

2.Archana

3.Minor Adhitya

(3rd petitioner is rep by his Mother /
Natural Guardian, the first petitioner)

.. Petitioners/Complainants

Vs

1. T.Ramesh

2. Thangavelu

3. Sathiyavathi

4. Shanthi

5. Karunakaran

.. Respondents/Respondents

Tr.CMP (MD)No.282 of 2020

Vidhya

.. Petitioner/Respondent

Vs

T.Ramesh

.. Respondent/Petitioner

Tr.CMP (MD)No.281 of 2020:- Petition filed under Section 24 r/w 151 of the Code of Civil Procedure, praying to withdraw the case in MC No.54 of 2016 on the file of Additional Mahila Court, Madurai and transfer the same to the file of Family Court, Tirunelveli.

Tr.CMP (MD)No.282 of 2020:- Petition filed under Section 24 r/w 151 of the Code of Civil Procedure, praying to withdraw the case in H.M.O.P.No.5061 of 2019 on the file of Family Court, Chennai and to transfer the same to the file of Family Court, Tirunelveli.

For Petitioner(s) : Mr.G.Prabhu Rajadurai in both cases

For Respondent(s) : Mr.R.Narayanan in both cases

COMMON ORDER

Both the transfer petitions are filed before this Court at the instance of the petitioner / wife, on the ground of inconvenience to appear before the Family Courts, where matrimonial cases are pending.



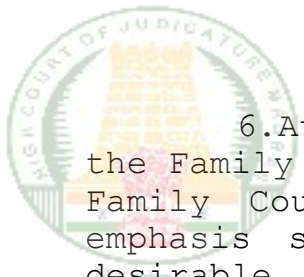
2.The necessary facts leading to the filing of the present petitions, are as follows:

The first petitioner in Tr.CMP.No.281 of 2020 is the wife of the first respondent. Their marriage took place on 20.01.1997 at Chennai and thereafter, they started living at Bangalore. Out of the said wedlock, two children, namely, petitioners 2 and 3 were born. Due to a matrimonial dispute, the petitioner / wife and her children are living separately. She filed a petition in M.C.No.54 of 2016 before the Additional Mahila Court, Madurai, in which, an interim order was passed, granting interim maintenance to the tune of Rs.45,000/- per month payable by the respondent / husband to the petitioner/wife and her children. According to the petitioner / wife, the said maintenance case is pending from the year 2016 due to non-cooperation of the respondent / husband and it lastly, stood adjourned to 17.12.2020 for trial. While so, with an intention to harass the petitioner / wife, the respondent / husband filed a petition in H.M.O.P.No.5061 of 2019 before the Family Court, Chennai, for restitution of conjugal rights and the same is pending. In such circumstances, the petitioner / wife preferred the present two transfer petitions praying to withdraw the said two matrimonial cases from the respective Courts and transfer the same to the Family Court, Tirunelveli.

3.The learned counsel for the petitioner / wife submitted that the respondent / husband, with an ulterior motive, filed HMOP.No.5061 of 2019 for restitution of conjugal rights before the Family Court, situated at Chennai. According to the learned counsel, the petitioner is depending on her parents and the father of the petitioner / wife unexpectedly became sick and hence, they shifted to Tirunelveli to live in their house. As such, the petitioner /wife finds it difficult to appear and contest both the matrimonial cases pending at different Courts i.e., one at Madurai and another at Chennai, that too, in the prevailing Covid-19 pandemic situation. Thus, the learned counsel sought for withdrawal and transfer of both the cases to the Family Court at Tirunelveli.

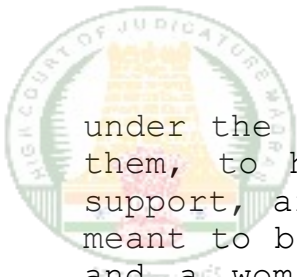
4.Denying the allegation raised by the petitioner / wife, the learned counsel for the respondent / husband submitted that the respondent / husband is regularly paying the maintenance as directed by the Family Court and is always ready and willing to live with his wife and children and hence, he instituted HMOP.No.5061 of 2019 before the Family Court, Chennai, for restitution of conjugal rights. He further submitted that there is every possibility of settling the matter amicably, if the matter is placed for mediation and hence, appropriate orders may be passed in this regard.

5.Heard both sides and perused the materials available on record. This Court has also enquired with the parties, who appeared in person, through Video Conferencing.



6. At the outset, it is necessary to appreciate the scheme of the Family Courts Act, 1984, which provides for the establishment of Family Courts for speedy settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. In dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that, it should make reasonable efforts at settlement before the commencement of the trial. That apart, the Family Court has the duty to make efforts for settlement. Further, as per the scheme of the Act, the parties are required to appear before the Court on every date of adjournment. The intention to incorporate such provisions is that if the personal appearance of the parties consistently before the Court, there is a possibility of settling the dispute. Normally, when one party approached the Court for redressal of matrimonial dispute, is making certain allegations. Those allegations may inflate the differences further and it would lead to other disputes either Criminal or Civil. The attempt for reconciliation under Section 9 of the Act is not for separating them, but for uniting the couple to the matrimonial dispute to live together. Hence, insisting of personal appearance on the date of reconciliation under the Hindu Marriage Act or the Family Courts Act is only to settle their dispute before the Court either due to intervention of the Court or the mediators or family counseling centers, but not to cause any inconvenience to either of the party. Therefore, the parties to the matrimonial dispute are bound to appear personally before the Courts either before the Family Court or the Senior Civil Judge's Court on the date of reconciliation proceedings and such appearance on the date of reconciliation proceedings is indispensable.

7. According to the Philosophy of the Act, the parties to the marriage, tying nuptial knot, are supposed to bring about the union of two souls. It creates a new relationship of love, affection, care and concern between the husband and wife and that it brings two families together. Such ties cannot be allowed to be severed on the grounds which are ordinary wear and tear of matrimonial life. Also, public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. Thus, marriage is considered to be a junction of three important duties i.e. social, religious and spiritual and the married couples, who choose to marry, are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole. The Supreme Court in **Pinakin Mahipatray Rawal v. State of Gujarat (2013) 2 SCALE 198** held that "marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living

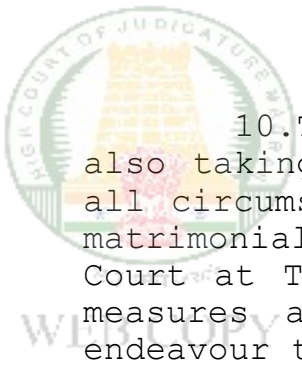


under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on". Therefore, marriage is meant to be a loving, intimate, selfless relationship between a man and a woman that lasts through eternity. It involves spiritual, emotional, and physical closeness and the married couples are meant to be unified in every possible way. Intimacy is a blessing that can lead to the incomparable joy of children as part of the eternal family unit.

8. At this juncture, the observation of the Supreme Court in **Chetan Dass v. Kamla Devi [(2001) 4 SCC 250, para 14 at pp.258-259]**, is profitably extracted hereunder:

"Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

9. In the present case, the petitioner / wife sought transfer of two matrimonial cases. M.C.No.54 of 2016 filed by her under the Protection of Women from Domestic Violence Act is pending on the file of the Additional Mahila Court, Madurai, whereas HMOP.No.5061 of 2019 filed by the respondent / husband is pending on the file of the Family Court, Chennai. It is not in dispute that as directed by the Family Court, the respondent / husband is regularly paying the monthly maintenance to the petitioner / wife. It is the grievance of the petitioner / wife that she lives separately along with her two children, her old parents are now, living at Tirunelveli and hence, it may not be possible for her to travel from Tirunelveli to Madurai and from Tirunelveli to Chennai for the hearings of the matrimonial cases pending at two different Family Courts. On the other hand, it is the submission made on the side of the respondent / husband that there is every possibility of settlement, if the matter is referred for mediation.



10.This Court, considering the aforesaid factual matrix and also taking note of the fact that the interest of the children in all circumstances remains vital, is inclined to order transfer the matrimonial cases pending at two different Courts to the Family Court at Tirunelveli, but, is of the view that the reconciliatory measures are to be taken at the first instance to make every endeavour to bring about reconciliation between the parties.

11.Accordingly, the present petitions are disposed of, with the following directions:

(i)MC No.56 of 2016 shall be withdrawn from the file of the Additional Mahila Court, Madurai and transferred to the Family Court, Tirunelveli. Similarly, HMOP.No.5061 of 2019 shall be withdrawn from the file of the Family Court, Chennai and transferred to the Family Court, Tirunelveli. The respective Family Courts at Madurai and Chennai, shall transmit the case papers to the Family Court, Tirunelveli, immediately, from the date of receipt of a copy of this order.

(ii)In the meanwhile, the matters are directed to be referred to the Tamil Nadu Mediation and Conciliation Centre at Madurai Bench of Madras High Court, for mediation on 01.02.2021, on which date, the parties are directed to be present along with their respective counsel to explore the possibilities of settlement. It is also open to the parties to have pre-conciliation meetings between them through their respective learned counsel. The mediation report be filed, before the Family Court, Tirunelveli, on or before 15.02.2021.

(iii)Upon receipt of the mediation report, the Family Court, Tirunelveli, shall have the first hearing of the cases on 15.02.2021 and thereafter, dispose of the same, as expeditiously as possible, after providing reasonable opportunity to both the parties. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Judge,
The Additional Mahila Court,
Madurai.



2. The Judge,

The Family Court, Chennai.

3. The Judge,

The Family Court, Tirunelveli.

Copy to

The officer Incharge,
Tamil Nadu Mediation and Conciliation Court,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-1423[F] dated
20/01/2021), SR-1350

Order made in
Tr.CMP (MD) Nos.281 & 282 of 2020
and
CMP. (MD) Nos.6273 & 6275 of 2020
19.01.2021

KM(CO)

KB(27.01.2021) 6P 7C