



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.316 of 2019

and

C.M.P. (MD) No.7400 of 2019

WEB COPY

K.Gayathri

... Petitioner

-vs-

R.Bharathidasan

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to order to transfer the case in HMOP 142 of 2019 pending on the file of the learned Principal Subordinate Judge, Thanjavur to the learned Principal Subordinate Judge at Trichy.

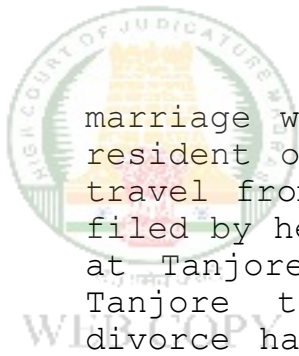
For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw HMOP 142 of 2019 pending on the file of the learned Principal Subordinate Judge, Thanjavur to the learned Principal Subordinate Judge at Trichy.

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 05.02.2016 at Kandasaras Marriage Hall as per their rites and customs. At the time of marriage the respondent was employed at Singapore. The petitioner's father offered 50 sovereigns of gold jewels, silver vessels and cash of Rs. 5 lakhs to the respondent as dowry. Subsequent to the marriage the respondent and his family members started demanding more dowry, due to which there was quarrel between both the families and thereby the petitioner was sent out of the matrimonial home. After the petitioner came out from the matrimonial home, the respondent had left to Singapore. The petitioner was under fond hope that time will heal the misunderstanding between them and the respondent would come and take her back to the matrimonial home, but the respondent did not bother to take care of the petitioner and thereby the petitioner filed a petition in HMOP No.113 of 2019 under Section 9 of the Hindu Marriage Act seeking for restitution of conjugal rights on the file of the Sub Court, Trichy. Though the respondent is employed at Singapore he has filed petition for divorce in HMOP No. 142 of 2019 before the learned Subordinate Judge, Thanjavur under Section 13(1)(ia) of Hindu Marriage Act for dissolution of



marriage which was solemnized on 05.02.2016. The petitioner is a resident of Musiri which is 75km away from Trichy and she has to travel from all the way to Musiri to Trichy for attending the case filed by her. The petition for divorce by the husband has been filed at Tanjore and she has to further travel 60 km from Trichy to Tanjore to attend the case filed by her husband. The petition for divorce has been filed only to harass and cause hardship to the petitioner. Further the respondent is now at Singapore and contesting the case only through his counsel and he is not personally appearing before the Court. The petitioner is now under the mercy of her aged old parents and due to their old age they are unable to accompany the petitioner and the petitioner has to all the way travel from Musiri to Thanjavur to attend the case. Taking into consideration the comparative hardship faced by the petitioner/wife the present petition has been filed seeking for transfer HMOP 142 of 2019 pending on the file of the learned Subordinate Judge, Tanjore to the file of the learned Subordinate Judge, Trichy to be tried along with HMOP No.113 of 2019.

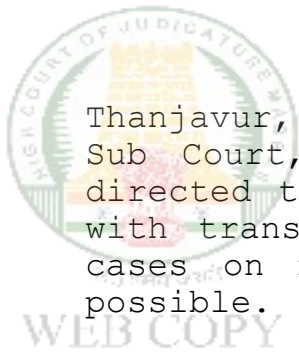
3.This Court had already permitted the petitioner to serve notice on the counsel for the respondent before the trial Court and notice is also served on the counsel and his name printed in the cause list. There is no representation for the respondent.

4.The petitioner is the wife she has filed a petition seeking for restitution of conjugal rights in HMOP No.113 of 2019 which is pending on the file of the Sub Court, Trichy. She being the resident of Musiri has to travel 75kms to attend the case. The respondent/husband had filed petition for divorce which is pending in HMOP No. 142 of 2019 on the file of the Sub Court, Tanjore. The respondent/husband is employed at Singapore and he is conducting the case through his counsel.

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 must be taken into account while deciding the petition for transfer.***

6.This Court is of the opinion that in the interest of justice both the cases can be tried by the Sub Court, Trichy.

7.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.142 of 2019 is withdrawn from the file of Sub Court, Thanjavur and transferred to the file of Sub Court, Trichy, for disposal as per law. The learned Subordinate Judge,



Thanjavur, is directed to transmit the papers to the file of the Sub Court, Trichy, forthwith. The Subordinate Judge, Trichy, is directed to take up HMOP No.113 of 2019 pending on its file along with transferred H.M.O.P.No.142 of 2019 and dispose of both the cases 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 (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1.The Principal Sub Ordinate Judge,
Thanjavur

2.The Principal Subordinate Judge,
Trichy.

Tr.C.M.P. (MD) No.316 of 2019

and

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RS (03.09.2021) 3P 3C