



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Tr.C.M.P.No.18 of 2022

&

C.M.P.No.559 of 2022

D.Praveena

... Petitioner

Vs

K.Johny Babu

... Respondent

Prayer: Petition is filed under Section 24 of the Code of Civil Procedure Code to withdraw the H.M.O.P.No.30 of 2018 pending on the file of the Court of Subordinate Judge, Arakkonam and transfer the same to the Court of the Subordinate Judge, Ranipet.

For Petitioner :Mr.S.Vijayanand

For Respondent :Mr.K.Thenraj

ORDER

The respondent wife is before this Court seeking to transfer H.M.O.P.No.30 of 2018, filed by the husband for divorce on the file of the Subordinate Court, Arakkonam to the Subordinate Court, Ranipet.

2. The grounds on which the wife has sought for transfer is that the petitioner is not having any source of income and the respondent husband is not maintaining her. That apart, she has to take care of her 7 year old daughter and she is finding it extremely difficult to maintain the family. The husband had cunningly played fraud on the petitioner wife, made her withdraw the Domestic Violence Complaint filed by her on the file of the Judicial Magistrate, Ranipet by entering into a compromise, but however reneging on his part of the agreement.

3. The petitioner is continuing with H.M.O.P.No.30 of 2018 despite the fact that the parties had agreed to mutually dissolve the marriage on condition that the respondent husband pays Rs.10,00,000/- as maintenance to the petitioner herein and



her minor daughter and also return the Car given by the petitioner's family to the respondent. The respondent had also agreed to withdraw H.M.O.P.No.30 of 2018 and the petitioner wife had agreed to withdraw Tr.O.P.No.172 of 2019 and D.V.C.No.1 of 2018 filed by her. The terms of the compromise has been extracted in the mutual consent divorce petition filed by the parties in H.M.O.P.No.119 of 2020.

4. The learned counsel for the petitioner would submit that the petitioner wife had fulfilled her obligations under the compromise but however the husband after the withdrawal of the Domestic Violence Petition and the Transfer Original Petition has refused to pay maintenance to the wife and has also not returned the Car but has been continuing with the proceedings in H.M.O.P.No.30 of 2018.

5. The learned counsel for the respondent on the other hand would vehemently contend that the petitioner has not cooperated in the proceedings and therefore the mutual consent divorce was ultimately dismissed. He would contend that the HMOP is at the stage of cross examination and therefore at this juncture it would not be in the interest of the Justice to transfer the matter. Therefore, the transfer should be dismissed.

6. This is a classic case of how a clever litigant not only misleads the Court but is also trying to gain an unfair advantage. In the mutual consent divorce petition in H.M.O.P.No.119 of 2020, the petitioner and the respondent has set out the broad details of the compromise. Under these terms, the obligation imposed on the respondent husband was that he should pay a sum of Rs.10,00,000/- to his wife and minor daughter towards their maintenance and should return the Car given by the petitioner's family to him. He was also under the obligation to withdraw H.M.O.P.No.30 of 2018, which is the subject matter of this Transfer Petition.

7. The petitioner wife on the other hand was compelled to withdraw the Transfer Petition filed by her on the file of the District Court, Vellore in Tr.O.P.No.172 of 2019 and the Domestic Violence Complaint filed by her before the Judicial Magistrate, Ranipet. In pursuance of the agreement, the wife has withdrawn both these petitions. After the withdrawal of these two petitions, the respondent husband has not complied with his obligation, which is a clear cut case of subterfuge and fraud.



8. Therefore, this Court taking into account the fact that the respondent has not taken any steps to maintain his wife and daughter and considering the fact that she is residing within the Jurisdiction of the Subordinate Court, Ranipet, H.M.O.P.No.30 of 2018 pending on the file of the Subordinate Court, Arakkonam shall be transferred to the file of the Subordinate Court, Ranipet. The evil motive of the respondent husband is evident from the fact he has got the wife to withdraw Domestic Violence Petition and opposed her second petition filed by her for interim maintenance. In case, the petitioner was to renew an application for maintenance, the Subordinate Judge, Ranipet shall consider the same and pass orders in accordance with law.

9. In the result, the Transfer Civil Miscellaneous Petition is allowed, accordingly, H.M.O.P.No.30 of 2018 is withdrawn from the file of the Subordinate Court, Arakkonam and transferred to the file of the Subordinate Court, Ranipet. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

10. After orders were pronounced, the learned counsel for the respondent would seek earlier disposal of H.M.O.P.No.30 of 2018, since the same is pending for over 4 years. The learned Subordinate Judge, Ranipet shall, subject to the filing of a maintenance petition by the wife and its disposal first, dispose of the above HMOP within a period of six months from the date of receipt of a copy of this order or six months from the disposal of the maintenance case if the petition is filed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Court, Arakkonam.

2.The Subordinate Court, Ranipet.

+2cc to Mr.S.Vijay Anand, Advocate SR.No.15779

Tr.C.M.P.No.18 of 2022

GPL(CO)
CB(28/03/2022)