

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

TR.CMP.No.187 of 2022

and

CMP.No.3783 of 2022

V.Haranya

... Petitioner

Vs.

K.Mahesh Kumar

... Respondent

PRAYER: The Memorandum of Transfer Civil Miscellaneous Petitions filed under Section 24 of Civil Procedure Code, to withdraw the HMOP No.4/2022 from the Judge, Family Court, Dharmapuri and transfer to the Judge, Family Court Salem to be tried along with HMOP No.580/2021.

For Petitioner : Mr.T.Sezhian

For Respondent : Mr.P.Valliappan for
M/S.P.V.Law Associates.

ORDER

Earlier the above Transfer Civil Miscellaneous Petition came up for hearing on 18.04.2022 and this Court on said date had allowed the Transfer Civil Miscellaneous Petition. However, the respondent /husband filed a civil miscellaneous petition in CMP.No.7700/2022 in the above Tr.CMP to recall the order dated 18.04.2022 and sought time for filing counter affidavit. This Court on 29.04.2022 had allowed the CMP.No.7700/2022 and recalled the earlier order dated 18.04.2022.

2. The respondent /husband had filed a counter affidavit dated 22.05.2022.

3. This Court perused the affidavit filed by the petitioner/wife and the counter affidavit filed by the respondent/husband.

4. The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 27.11.2020 as per Hindu rites and customs. Since, the relationship between the couples went bitter, the petitioner/wife has initially filed a petition in

H.M.O.P.No.580 of 2021, on the file of the Family Court, Salem, against the respondent for restitution of conjugal rights. As a counter blast, the respondent/husband filed petition in H.M.O.P.No. 4 of 2022 for divorce on the file of the Family Court, Dharmapuri. Now, the petitioner herein has preferred the present petition to withdraw H.M.O.P.No. 4 of 2022 pending on the file of the Family Court, Dharmapuri and transfer the same to the file of the learned Judge, Family Court, Salem.

5. In the affidavit filed in support of the petition, the petitioner/wife has stated that she is residing in her parents house in Salem. It is her grievance that she find it very difficult to travel alone from Salem to Dharmapuri ; the petitioner/wife is completely dependent on her parents for survival; she has no financial resources to travel from Salem to Dharmapuri for each appearance and it will cause great hardship to her. Hence the petitioner filed the present transfer Civil Miscellaneous Petition to withdraw the HMOP.No.4/2022 from the Family Court, Dharmapuri and transfer it to the Family Court, Salem to be tried along with HMOP.No.580/2021.

6. The respondent/husband has filed a counter affidavit stating that the petitioner/wife will not have any difficulty to travel to Dharmapuri for attending the Court proceedings and it is false to state that her father needs to accompany her; if the proceedings are transferred to Salem, there will not be any protection for the respondent and hence the petition should be dismissed.

7. It is needless to say that in the matrimonial proceedings, preference in jurisdiction should be given to the convenience of the wife. The said position has been settled in various judgements of the Hon'ble Supreme Court and more particularly the Judgement reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs.Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]. In fact as per the amended Section 19(iii-a) of the Hindu Marriage Act, 1955, the wife is guarded with the right to file proceedings in the place where she resides. The above amendment was brought with the object of facilitating the wife to participate in the matrimonial proceedings without any hardship. Though the respondent has stated that there is no protection for him if he goes to Salem to attend the Court proceedings, he did not substantiate his doubts with any materials. In view of the above reasons, I feel that the prayer of the petitioner should be considered favourably.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and the Divorce Petition in H.M.O.P.No.4 of 2022 pending on the file of the Family Court, Dharmapuri is ordered

to be withdrawn and transferred to the file of the Family Court,
Salem to be tried along with HMOP.No.580/2021. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Judge, Family Court, Dharmapuri
2. The Judge, Family Court, Salem.

+1cc to M/s.R.Meenal, Advocate, S.R.No.35262
+1cc to Mr.P.Valliappan, Advocate, S.R.No.34978

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and
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AJS(CO)
CT/18/07/2022