



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Tr.C.M.P. No.322 of 2022

and

C.M.P.No.6462 of 2022

G.Arunmozhi

... Petitioner

..Vs..

1.H.Ashwini

2.Minor A.Parvesh Kumar

Rep by her mother 1st respondent

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw the Crl.M.P.No.433 of 20221 in M.C.No.17 of 2006 pending on the file of the Family Court, Krishnagiri and consequently transfer the same to the IV Additional Family Court, Chennai to be tried along with HMOP.No.3562 of 2015.

For Petitioner : Mr.M.Ramesh

For Respondent : No appearance

O R D E R

This Transfer Petition is filed by the petitioner/husband to withdraw Crl.M.P.No.433 of 20221 in M.C.No.17 of 2006 filed by the first respondent/wife pending on the file of the Family Court, Krishnagiri and consequently transfer the same to the file of the IV Additional Family Court, Chennai to be tried along with HMOP.No.3562 of 2015.

2.Heard the learned counsel for the petitioner and perused the materials available on record. The respondents, though served, have not entered appearance either in person or through counsel.

3.The petitioner is the husband, first respondent is the wife and second respondent is the son. The petitioner has filed HMOP.No.3562 of 2015 for the relief of dissolution of marriage on the ground of cruelty and desertion. The first respondent is contesting the same. However, the first respondent has earlier



filed a maintenance case in M.C.No.17 of 2006 before the Chief Judicial Magistrate No.I, Krishnagiri. The first respondent has filed I.A.No.1550 of 2016 in HMOP.No.3562 of 2015 for the purpose of claiming interim maintenance for herself and her minor son.

4.In M.C.No.17 of 2006, an order has already been passed on 21.08.2007 by directing the petitioner to pay a maintenance amount of Rs.2,000/- per month to the first respondent and Rs.500/- per month to the second respondent. Since the said order was not complied with and the arrears of maintenance has to be paid, the first respondent filed Crl.M.P.No.433 of 2021 under Section 128 Cr.P.C, to enforce the order passed in M.C.No.17 of 2006.

5.Since the M.C.No.17 of 2006 is disposed and Crl.M.P.No.433 of 2021 has been filed for enforcing the said order, the Crl.M.P.No.433 of 2021 cannot be treated like a separate litigation and withdrawn and transferred to the IV Additional Family Court, Chennai. The learned Chief Judicial Magistrate No.I, Krishnagiri, who has passed the order in the M.C.No.17 of 2006 alone has got the jurisdiction to pass enforcement order in Crl.M.P.No.433 of 2021 filed under Section 128 of Cr.P.C. Since the substantial issue involved in M.C.No.17 of 2006 has already been decided and set at rest, Crl.M.P.No.433 of 2021 filed for enforcement of the same cannot be withdrawn and transferred and for the reason, the Transfer Petition itself is not maintainable.

6.Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vkrr

To

1. The IV Additional Judge,
Family Court,
Chennai.



2. The Judge,
Family Court,
Krishnagiri.

3. The Chief Judicial Magistrate No.I,
Krishnagiri.

+1cc to Mr.M.Ramesh, Advocate, S.R.No.32758

Tr.C.M.P. No.322 of 2022
and
C.M.P.No.6462 of 2022

PL (CO)
UMA (17/06/2022)