



Tr.CMP.No.425 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.07.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

TR.CMP.No.425 of 2022

and

CMP.No.7908 of 2022

Dr.Naveen Narendrananth ... Petitioner

Vs.

Dr.Varsha @ Varsha Backiavathy ... Respondent

PRAYER: The Memorandum of Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code, to withdraw and transfer the DVC.No.3 of 2022 on the file of the XVII Metropolitan Magistrate Court at Saidapet and file the same along with OP.No.4436 of 2021 on the file of the IV Additional Family Court, Chennai.

For Petitioner : Mr. M.Aloysius Raja Pragash

For Respondent : Mr.Uttam Joseph Cheriyan

ORDER

This Transfer Civil Miscellaneous Petition has been filed to withdraw and transfer DVC.No.3 of 2022 on the file of the XVII Metropolitan



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Magistrate Court at Saidapet and to hear the same along with OP.No.4436 of 2021 on the file of the IV Additional Family Court, Chennai.

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2. The petitioner is the husband, against him the wife has filed a petition in DVC.No.3 of 2022 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai. The petitioner has filed an original petition in OP.No.4436 of 2021 on the file of the IV Additional Family Court, Chennai seeking a decree for dissolution of marriage.

3. It is submitted that since both the matters are pending before the different courts, it is difficult for the petitioner to attend both the Courts; if the hearings of both cases are conducted in one and the same Court that will avoid conflict of judgments.

4. The proceedings under Domestic Violence Act cannot be transferred from a Magistrate Court to a Civil or Family Court at the instance of the respondent. However if the wife has filed a petition for transfer and with her consent the proceedings can be transferred from the Magistrate Court to another Court. Sec.2(q) of the protection of Women



from Domestic Violence Act, 2005 would read as under:

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“Section 2(q) in The Protection of Women from Domestic Violence Act, 2005

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.”

5. The proceedings under Domestic Violence Act initiated by the aggrieved wife can be transferred to the Family Court at the instance of the victim or with her consent. In the case in hand the transfer application has been filed by the husband. Since the family court while dealing with the cases under Domestic Violence Act, cannot invoke the power of the Magistrate. So the complaint cannot be deprived to avail the benefit of conducting the domestic violence proceedings before the Magistrate. However it is open to the victim to waive her above right and seek to transfer the said proceedings to be conducted along with any other proceedings pending in the Family Court. Since the request for transfer has originated by the husband against whom the complaint is given in the domestic violence case, the prayer for transfer the petition cannot be considered.



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6. Accordingly, the Transfer Civil Miscellaneous Petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
jrs



To



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1. The XVII Metropolitan Magistrate Court at Saidapet.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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R.N.MANJULA, J.,

jrs

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