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Tr.C.M.P.No.463 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.463 of 2022

and

C.M.P.No.8320 of 2022

N.Rajakumari

.. Petitioner

VS

M.Manjunathan

.. Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.32 of 2019 on the file of the Hon'ble Sub-Court at Mettur and transfer the same to the Hon'ble Family Court at Chengalpattu to be tried along with M.C.No.12 of 2022.

For Petitioner : Mr.C.Rajaguru

For Respondent : No Appearance



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ORDER

The transfer petition is filed to withdraw the H.M.O.P.No.32 of 2019 on the file of the learned Sub-Court, Mettur and transfer the same to the learned Family Court, Chengalpattu to be tried along with M.C.No.12 of 2022.

2. The marriage between the petitioner and the respondent was solemnized on 05.09.2005 as per the Hindu Rites and Customs. Due to misunderstandings, the petitioner and the respondent are living separately.

3. Learned counsel for the petitioner states that the petitioner / wife is working as a temporary employee in Chengalpattu District and is living with her one year old child, who is differently abled. The petitioner filed a maintenance case in M.C.No.12 of 2022 on the file of the learned Family Court, Chengalpattu. The respondent / husband filed H.M.O.P.No.32 of 2019 for divorce on the file of the learned Sub-Court, Mettur.



4. The child, born from and out of the wedlock between the petitioner and the respondent, admittedly, is differently abled and being maintained by the petitioner / mother, thus, the remedy of interim maintenance is of paramount importance.

5. Maintenance is a measure of social justification, as envisaged under the Constitution, to prevent the wife and children from falling into destitution. Therefore, the Courts, even in the absence of any application, is bound to consider the grant of interim maintenance more specifically to the minor children if such children is maintained by the wife, who is unemployed. Even in respect of employed mother, the father has to share maintenance amount.

6. The Courts dealing with the maintenance petitions are expected to be sensitive in granting interim maintenance at the first instance and even in the deserving cases, in the absence of any application by the mother, who may some time be ignorant, has to grant interim maintenance *suo mottu* which is permissible in view of the law laid out.



7. Maintenance to the minor children is a right to life as envisaged under Article 21 of the Constitution. No children shall be deprived of the right to maintenance from the parents and even in the case where the unemployed wives maintaining the children, the fathers are not paying any maintenance. Thus, the Courts must ensure that the interim maintenance is being paid to the children by the fathers during the pendency of the matrimonial dispute between the husband and wife. Execution of maintenance is also to be monitored properly by the Courts concerned, in order to protect the livelihood of the children.

8. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases, are well settled through the three decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in ***W.A.No.1181 of 2009, dated 09.07.2010***, wherein in paragraphs-21 and 22, it has been observed as under:-

“21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the



provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.”



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(ii) In yet another case in ***Tr.CMP.Nos.138 and 139 of 2006, dated 30.08.2006***, the High Court of Madras has considered the following judgments of Hon'ble Supreme Court of India:-

*“(1) In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.*

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

*(3) In the case of **Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355]**, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the*



distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

*(4) In a decision in **Archana Singh vs. Surendra Bahadur Singh [(2005) 12 SCC 395]**, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under 5 Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.”*

(iii) In a decision made in **TR.CMP(MD)No.108 of 2010, dated 03.03.2011**, the Madurai Bench of Madras High Court, wherein in paragraph-18, it has been observed as below:-

“18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this



amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the Legislature is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.”

9. Considering the facts and circumstances, the H.M.O.P.No.32 of 2019 pending on the file of the learned Sub-Court, Mettur stands transferred to the learned Family Court, Chengalpattu to be tried along with M.C.No.12 of 2022.

10. Learned Family Court, Chengalpattu is expected to ensure that the maintenance amount is ordered and recovered from the respondent / husband promptly for the maintenance of the thirteen year old differently abled male child.



11. Learned Sub-Court, Mettur is directed to transmit the case papers within a period of four weeks from the date of receipt of a copy of this order.

12. Accordingly, the transfer petition is allowed. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.12.2022

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Index : Yes / No

Speaking order / Non-speaking order

To

1. The Sub-Court, Mettur.

2. The Family Court, Chengalpattu.



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S.M.SUBRAMANIAM, J.

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