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Tr.CMP Nos.522 and 536 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-12-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.Nos.522 and 536 of 2022
and
C.M.P.Nos.9467 and 9545 of 2022

Lavanya

.. Petitioner in both Tr.CMPs

vs.

G.Vinoth Kumar

.. Respondent in both Tr.CMPs

PRAYER : Transfer CMP No.522 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.698 of 2020 from the file of the Sub Court at Poonamallee and transfer the same to the file of the Family Court at Chengalpattu.

PRAYER : Transfer CMP No.536 of 2022 is filed under Section 24 of the Civil Procedure Code, to withdraw the case in GWOP No.24 of 2022 from the file of the Principal District Court at Chengalpattu and transfer the same to the file of the Family Court at Chengalpattu.



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Tr.CMP Nos.522 and 536 of 2022

For Petitioner in both Tr.CMPs : Mr.Manoj Sreevalsan

For Respondent in both Tr.CMPs: No Appearance

COMMON ORDER

The Transfer Civil Miscellaneous Petition No.522 of 2022 is filed to withdraw the case in HMOP No.698 of 2020 pending on the file of the Sub Court at Poonamallee and transfer the same to the file of the Family Court at Chengalpattu.

2. The Transfer Civil Miscellaneous Petition No.536 of 2022 is filed to withdraw the case in GWOP No.24 of 2022 pending on the file of the Principal District Court at Chengalpattu and transfer the same to the file of the Family Court at Chengalpattu.

3. The marriage between the petitioner and the respondent was solemnised on 11.03.2012 as per Hindu Rites and Customs. A male child was born from and out of the wedlock between the petitioner and the respondent on 06.12.2012. Due to misunderstanding, the petitioner and the



Tr.CMP Nos.522 and 536 of 2022

respondent are living separately.

WEB COPY

4. The respondent filed HMOP No.698 of 2020 for dissolution of marriage on the file of the Sub Court at Poonamallee. The respondent filed yet another petition in GWOP No.24 of 2022 pending on the file of the Principal District Court at Chengalpattu.

5. The learned counsel for the petitioner made a submission that the petitioner is unemployed and residing with her ageold parents. Thus she is the dependant of her parents even for her livelihood and she has to maintain her minor child. Thus she is not in a position to travel all along from Poonamallee to Chengalpattu and contest the case filed by the respondent for divorce.

6. 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



WEB COPY



Tr.CMP Nos.522 and 536 of 2022

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."

(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.**



WEB COPY



Tr.CMP Nos.522 and 536 of 2022

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



WEB COPY



Tr.CMP Nos.522 and 536 of 2022

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 Legislator 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



Tr.CMP Nos.522 and 536 of 2022

jurisdiction of the Court where she resides."

WEB COPY

7. Considering the facts and circumstances, this Court is inclined to consider the case of the petitioner. Accordingly, the HMOP No.698 of 2020 now pending on the file of the Sub Court at Poonamallee and GWOP No.24 of 2022 now pending on the file of the Principal District Court at Chengalpattu stand transferred to the Family Court at Chengalpattu forthwith for joint trial and for early disposal. The Sub Court at Poonamallee is directed to transmit the case papers relating to HMOP No.698 of 2020 to the Family Court at Chengalpattu and the Principal District Court at Chengalpattu is directed to transmit the case papers to the Family Court at Chengalpattu in respect of GWOP No.24 of 2022, within a period of four weeks from the date of receipt of a copy of this order.

8. With the abovesaid directions, both the Transfer Civil Miscellaneous Petitions stand allowed. However, there shall be no order as



Tr.CMP Nos.522 and 536 of 2022

to costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

07-12-2022

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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To

1.The Principal District Judge,
Principal District Court,

10/12



Tr.CMP Nos.522 and 536 of 2022

Chengalpattu.

2.The Sub Judge,
Sub Court at Poonamallee.

2.The Judge,
Family Court at Chengalpattu.

S.M.SUBRAMANIAM, J.

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WEB COPY



Tr.CMP Nos.522 and 536 of 2022

Tr.CMP Nos.522 and 536 of 2022

07-12-2022

12/12