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Tr.C.M.P.No.641 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.641 of 2022

and

C.M.P.No.10957 of 2022

Mr.G.Sridhar

... Petitioner

Vs.

Mrs.Sabitha

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to order withdrawal of the Domestic Violence Case in D.V.C.No.73 of 2022 from the file of the Learned Judicial Magistrate Additional Mahila Court, Thiruvallur and transfer the same to the Learned III-Additional Family Judge at Chennai.

For Petitioner : Mr.R.Abdul Mubeen

For Respondent : Mr.T.Kamalakkannan



ORDER

The petition for transfer is filed to withdraw the Domestic Violence Case in D.V.C.No.73 of 2022 from the file of the Learned Judicial Magistrate Additional Mahila Court, Thiruvallur and transfer the same to the Learned III-Additional Family Judge at Chennai.

2. The marriage between the respondent and the petitioner was solemnised on 27.01.2019 as per the Hindu Rites and Customs. From and out of the wedlock between the petitioner and the respondent a male child was born and now aged about two and half years old. The child is now living with the respondent mother.

3. The learned counsel for the petitioner states that the respondent / wife filed Domestic Violence Case No.73 of 2022 on the file of Judicial Magistrate Additional Mahila Court, Thiruvallur and the petitioner is unable to travel and attend in view of the fact that his aged parents were also impleaded as party in Domestic Violence Case. Thus, the Domestic Violence Case is to be transferred to the III Additional Family Court, Chennai.



4. The learned counsel for the respondent raised an objection by stating that the respondent is residing along with her parents and she has to take care of her two and half year old child and therefore, she is not in a position to spend, travel and contest the case filed by the petitioner for Dissolution of Marriage in HMOP No.5260 of 2021. The respondent further filed the Maintenance Case No.99 of 2021.

5. This Court is of the considered opinion that the residence of the wife is to be considered for the purpose of conducting all these cases, since she is unemployed and has to take care of her two and half year old child. Further, the respondent and the child is depending on the parents of the respondent and therefore, the respondent may not be in a position to travel all along with the child and contest the divorce case filed the petitioner in HMOP No.5260 of 2021.

6. The III Additional Family Court, Chennai has not considered interim maintenance at least for child despite of the fact that the maintenance case is pending for the past about one year. In such



circumstances, the Courts are bound to grant interim maintenance at least for the child even in case the wife is employed. In the present case, the wife is unemployed and therefore, grant of interim maintenance is certainly warranted. For grant of interim maintenance various factors has laid down by the Hon'ble Supreme Court of India in the case of ***Rajnesh Vs. Neha and another*** reported in [(2021) 2 SCC 324], which is to be considered. Even the Court can grant interim maintenance in the absence of any application from either of the parties.

7. Once it is brought to the notice this Court that a minor child is to be maintained by the wife, who is unemployed, then the Courts are bound to grant interim maintenance, even if no application is filed by the wife. In the present case, the respondent is depending on her parents and she has to maintain two and half year old male child. The petitioner is not providing any maintenance for the child and therefore, the Court has to dispose of the maintenance case immediately and by granting interim maintenance and based on the principles laid down by the Apex Court in the case (cited *supra*).



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.”

(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 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 jurisdiction of the Court where she resides.”

9. In view of the facts and circumstances, the HMOP No.5260 of 2022 pending on the file of Principal Family Court Judge, Chennai and MC No.99 of 2021 pending on the file of the III Additional Family Court, Chennai stand transferred to the Family Court at Thiruvallur enabling the



respondents to attend all the cases in the Thiruvallur Court campus. The Family Court, Thiruvallur shall consider granting of interim maintenance by hearing MC No.99 of 2021 and after affording opportunity to the parties within a period of six (6) weeks from the date of receipt of a copy of this order. Even in the absence of any application, interim maintenance are to be considered by the Courts considering the interest of the minor child, which is to be looked after by the respondent mother, who is unemployed. The Family Court at Chennai is directed to transmit all the case papers to the Family Court at Thiruvallur, within a period of two (2) weeks from the date of receipt of a copy of this order.

10. With the abovesaid directions, the Transfer Civil Miscellaneous Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

12.12.2022

Jeni
Index : Yes
Speaking order



To

1.The Judge,
Family Court,
Thiruvallur.

2.The Judge,
Family Court,
Chennai.

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S.M.SUBRAMANIAM, J.

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