



Tr.CMP No.763 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-12-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.763 of 2022

and

C.M.P.No.13024 of 2022

Vishnupriya

.. Petitioner

VS.

S.Jagadeesan

.. Respondent

PRAYER : This Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.65 of 2021 from the file of the Family Court at Perambalur and transfer the same to the file of the Sub Court at Kallakurichi to be tried along with HMOP No.82 of 2022..

For Petitioner

: Ms.M.Adhishree for
Mr.N.Manoharan



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For Respondent : No Appearance

ORDER

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in HMOP No.65 of 2021 from the file of the Family Court at Perambalur and transfer the same to the file of the Sub Court at Kallakurichi to be tried along with HMOP No.82 of 2022.

2. The marriage between the petitioner and the respondent was solemnised on 11.11.2018 as per Hindu Rites and Customs. From and out of the wedlock between the petitioner and the respondent, one male child was born now aged about 2 years old. Due to misunderstanding, both the petitioner and the respondent are living separately.

3. The learned counsel for the petitioner states that the respondent filed HMOP No.65 of 2021 for dissolution of marriage before the Family Court at Perambalur. The petitioner filed HMOP No.82 of 2022 before the



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Sub Court at Kallakurichi for restitution of conjugal rights. The petitioner is unemployed and she is depending on her parents. The petitioner and her two year old male child are now residing along with her parents at Kallakurichi. Thus, she is not in a position to travel all along from Kallakurichi to Perambalur and contest the dissolution of marriage filed by the respondent in HMOP No.65 of 2021 before the Family Court at Perambalur.

4. The learned counsel for the petitioner brought to the notice of this Court that the respondent is working in Information Technology Sector and the petitioner is unemployed. The petitioner has to maintain her two year old male child and she is depending on her parents both for her livelihood and for the maintenance of her two year old male child. The respondent-husband is not paying Interim Maintenance to the child as well as the petitioner-wife.

5. The learned counsel for the respondent objected the said contention by stating that the respondent is willing to take care of the minor



child and the petitioner is not allowing the respondent to see the child and therefore, he is not in a position to pay the Interim Maintenance.

6. The learned counsel for the respondent reiterated that unless the petitioner permits the respondent to visit the child, he will not be in a position to pay the Interim Maintenance. The tenor of the respondent expressed through the learned counsel for the respondent shows the attitude and conduct of the respondent, who is none other than the father of the 2 year old child. Such an approach of the respondent, at no circumstances, be encouraged by this Court.

7. Parents are duty bound to maintain their minor children. The 2 year old child has to be taken care of by the father, who is the natural guardian and an earning member. The petitioner-wife is unemployed and therefore, the respondent-father has to maintain the child.

8. For grant of Interim Maintenance to the minor children, no



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application is required. Even in the absence of any application, the Courts are bound to consider grant of Interim Maintenance in the interest of the minor children and to protect their livelihood, which is the Fundamental Right to life under Article 21 of the Constitution of India.

9. Remedy of maintenance is the measure of social justice as envisaged under the Constitution to prevent the wife and the children from falling into destitution and vagrancy. Preamble and Article 39 and 15(3) of the Indian Constitution envisage social justice and positive State action for empowerment of women and children.

10. Many citizen in our Great Nation on account of certain matrimonial issues, never think of filing a formal petition for maintenance even to the minor children. In such circumstances, Courts are expected to consider and grant Interim Maintenance to protect the livelihood of the minor children during the pendency of the matrimonial disputes between the husband and wife.



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11. Court must act as a custodian of minor children, when such children are neglected by either of the parents. When the mother of the child is unemployed and living along with her parents mostly is the situation prevailing in our country. Grandparents are burdened with the minor children and the fathers are attempting to escape from the clutches of liability, which cannot be tolerated by the Courts. The father being the natural guardian under the Guardian and Wards Act, is bound to maintain his minor daughter or son by paying maintenance even in such circumstances, where there is a matrimonial dispute or for visitation right. Such rights are to be established considering various other facts and circumstances. Whether the father or mother is entitled for a visitation is to be considered based on the facts and circumstances of each case and not allowing the father or mother to have visitation right will not be a ground to deny Interim Maintenance to the minor child during the pendency of the matrimonial disputes.



12. In the present case, the transfer of the case is to be considered, since the petitioner is unemployed and taking care of 2 year old male child and she is residing along with her parents at Kallakurichi. That being the case, the divorce case filed by the respondent is to be transferred to the place, where the petitioner resides.

13. 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,



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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



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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



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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



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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 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



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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."

14. Accordingly, this Court is inclined to pass the following orders:

(1) HMOP No.65 of 2021 pending on the file of the Family Court at Perambalur stands transferred to the file of the Sub Court at Kallakurichi forthwith to be tried along with HMOP No.82 of 2022.

(2) The Family Court at Perambalur is directed to transmit the case papers to the Sub Court at Kallakurichi, within a period of four weeks from



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the date of receipt of a copy of this order.

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(3) The respondent-husband is directed to pay the Interim Maintenance of Rs.5,000/- (Rupees Five Thousand) to the minor male child, who is now living with the petitioner-mother with effect from 15.01.2023 onwards.

(4) The Interim Maintenance of a sum of Rs.5,000/- (Rupees Five Thousand) is to be paid on or before 10th day of every calendar month to the Bank Account of the petitioner-mother and the learned counsel for the petitioner undertakes that the Bank Account Number along with the details will be provided to the learned counsel for the respondent for informing the same to the respondent within a period of one week from today.

(5) In respect of final maintenance or otherwise, the petitioner is at liberty to file an appropriate application before the Competent Court and on filing such application, the Court Competent shall determine the quantum of final compensation to be paid to the minor child and to the petitioner, who is unemployed. Even in the absence of filing an application by the petitioner, the Court can grant maintenance.



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

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Speaking Order/Non-Speaking Order.
Internet : Yes/No.
Index: Yes/No.
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To

1.The Judge,
Family Court,
Peramballur.

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2.The Sub Judge,
Sub Court.
Kallakurichi.

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S.M.SUBRAMANIAM, J.

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