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Tr.C.M.P.No.785 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.785 of 2022

and

C.M.P.No.13486 of 2022

Sangeetha

... Petitioner

Vs.

M.Mahesh

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the HMOP No.59 of 2022 pending on the file of the Sub-Court, Bhavani and transfer the same to the file of Sub- Court Avinashi.

For Petitioner : Ms.J.T.A.Jitha for
Mr.K.Govi Ganeshan

For Respondents : Mr.A.Vignesh



ORDER

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This petition has been filed to withdraw and transfer the HMOP No.59 of 2022 pending on the file of the Sub-Court, Bhavani and transfer the same to the file of Sub-Court Avinashi.

2. The marriage between the petitioner and the respondent was solemnised on 05.09.2016 as per the Hindu Rites and Customs. Out of the wedlock between the petitioner and the respondent, one female child has been born who is now aged about 5 years. The daughter is now living with the petitioner/mother and is school-going.

3. Due to some misunderstandings, the petitioner and the respondent are living separately. The petitioner states that she is residing in her parents' house at Avinashi and she has to take care of the five-year-old daughter and thus, she is not in a position to travel and contest the case filed by the respondent for restitution in H.M.O.P. No.59 of 2021, pending on the file of the Sub-Court Bhavani.



4. The learned counsel for the petitioner made a submission that the respondent is now working at Chennai and therefore, the transfer of the case would not cause any prejudice to the respondent to contest the case filed by him before the Sub-Court at Bhavani.

5. Since the HMOP is filed for the restitution of conjugal rights, this Court asked the parties to be present, and during the discussion, they were not ready for reunion immediately, and therefore, they are at liberty to go for further conciliation for the purpose of reunion. As far as the transfer petition is concerned, the petitioner/wife is residing along with her parents and she has to take care of the five-year-old, school-going daughter. That apart, the respondent is also working in Chennai, and thus, the transfer would not cause any prejudice.

6. The petitioner states that she is taking care of the treatment for the child and is not in a position to spend more money on medical expenses. She has to depend on her parents even to meet the medical expenses of her daughter. This Court is of the considered opinion that the respondent/husband is well positioned and working as a Manager in an Insurance



Company and therefore, he would have to pay interim maintenance to the child till such time the final maintenance is decided or reunion takes place.

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7. Remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent children from falling into destitution. Thus, the right of maintenance, being an integral part of Article 21 of the Constitution has to be granted by the Courts without any loss of time. Maintenance of minor children is the duty of the parents and therefore, the Courts, while dealing with the matrimonial cases are bound to consider the facts and circumstances and grant interim maintenance to the minor children even in the absence of any application claiming maintenance.

8. Many women in our country may not be fully aware of their right to maintenance and more so, to the minor children. In the event of a dispute between the husband and the wife, mostly the wife is driven out to their parents' house along with the children and they are made to suffer. Under those circumstances, the Courts are expected to borne in mind that the right of the children for maintenance is to be protected and interim maintenance is to be granted with immediate effect so as to save the children from



destitution. An unemployed mother or even an employed mother may not be in a position to provide a better livelihood to the children while staying alone. Thus, an interim maintenance is the basic right of minor children which cannot be denied by the Courts even if no application for grant of such maintenance is filed by the wife.

9. The respondent who is present before this Court agreed to pay a sum of Rs.10,000/- towards interim maintenance to his daughter. In view of the said undertaking in person by the respondent, he is directed to pay the monthly interim maintenance of Rs.10,000/- (Rupees Ten Thousand only) which is to be deposited in the bank account of the petitioner viz.

(Bank Account holder name : Sangeetha C.

HCFC Bank Account No.50100 26310 3045,

IFSC code: HDFC0002225

Branch name: Avinashi)

on or before the 10th day of every calendar month. In the event of failure on the part of the respondent in depositing the maintenance amount, the petitioner/wife is at liberty to approach this Court by filing a contempt petition.



10.Regarding the matrimonial dispute, the parties are at liberty to resolve the same through conciliation or by way of mutual discussion since the H.M.O.P. itself is for the restitution of conjugal rights. As far as the transfer of the HMOP is concerned, the place of the petitioner is preferred since she is maintaining the five-year-old girl child.

11. If the respondent wishes to see his daughter by going alone to the petitioner's house, he may be permitted to visit the child at all circumstances, and it is made clear that the respondent shall not pick up any quarrel or create any undue circumstances with the petitioner while visiting the child.

12. Accordingly, HMOP No.59 of 2021, pending on the file of the Sub-Court, Bhavani is transferred to the Sub-Court Avinashi. The Sub-Court, Bhavani is directed to transfer the case papers to the Sub-Court Avinashi, Tiruppur District, within the period of four (4) weeks from the date of receipt of a copy of this order.

13. 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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20.12.2022

Index : Yes

Speaking order

To

1. Sub-Ordinate Court, Bhavani

2. Family Court, Avinashi.



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S.M.SUBRAMANIAM, J.

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