



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.804 of 2022

and

C.M.P.No.13799 of 2022

S.Saranyamary

... Petitioner

Vs.

M.Rajasekar

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in I.D.O.P.No.137 of 2021 on the file of the Hon'ble Family Court at Chengalpattu District and transfer the same to Family Court at Chennai District.

For Petitioner

: Mr.M.Rajeswaran

and

Mr.B.Leelesh Sundaram

For M/s.Nathan and Associates

For Respondent

: Mr.G.Paul Einstein



ORDER

The petition for transfer is filed to withdraw the case in I.D.O.P.No.137 of 2021 on the file of the Hon'ble Family Court at Chengalpattu District and transfer the same to Family Court at Chennai District.

2. The marriage between the petitioner and the respondent was solemnised on 25.01.2016 as per the Christian Rites and Customs. One female child was born from and out of the wedlock between the petitioner and the respondent. Due to misunderstanding, the petitioner and the respondent are living separately. The child aged about 5 years is now living with the petitioner/mother.

3. The respondent/husband filed I.D.O.P.No.137 of 2021 for Dissolution of Marriage on the file of the Family Court at Chengalpattu. The petitioner/wife filed M.C.No.525 of 2022 on the file of the V Additional Family Court, Chennai.



4. The learned counsel for the petitioner states that the petitioner/wife is also working as an Office Assistant and with the meagre salary, she has to maintain her minor school going female child and therefore, she is not in a position to spend, travel and contest the divorce petition filed by the respondent on the file of the Family Court, Chengalpattu. She has to take care of the 5 years old female child also.

5. The learned counsel for the respondent raised an objection by stating that the respondent is running a small shop nearby Chengalpattu and he has to take care of his parents. The petitioner/wife is capable of travelling and contest the case at Chengalpattu. Therefore, the transfer petition is to be rejected.

6. When this Court asked the respondent/husband, why he has not contributing for the maintenance of the five year old female child, the learned counsel for the respondent states that the respondent has not even provided with the visitation right.



7. This Court is of the considered opinion that the disputes are no way connected with the maintenance of a minor child. Dispute between the husband and wife is to be resolved in the manner known to law or they can go for Conciliation for reunion or otherwise. However, the interest of the minor child is of paramount importance and the Courts are bound to protect the interest of the minor children at all circumstances.

8. In the present case, the 5 year old female child is being maintained by the petitioner/wife, who is also earning lesser salary. Contribution of the father is to be made and in the present case, admittedly, the respondent-father is not paying any maintenance, despite the fact that the Maintenance Case was already filed. The trial Court also failed to consider grant of interim maintenance in such circumstances. Interim maintenance is to be granted, considering the facts and circumstances of the case. If there is a minor child and the child is to be maintained by the mother, then interim maintenance is to be ordered by the Courts even if there is no application from either of the parties or otherwise.



9. Maintenance being the livelihood of a child and Right to Life being an integral part of Article 21 and a Fundamental Right, the Courts are bound to interfere in such circumstances and ensure that the maintenance of the children are protected at all circumstances even during the sustenance of the Matrimonial dispute between the husband and wife. The agony of the child and its mental condition during the period of dispute between father and mother, all to be taken note of and the interim maintenance is to be ordered by the Courts even if there is no application or otherwise.

10. The quantum of maintenance to be ordered is to be considered based on the income status and lifestyle of the parties before the Court. Remedy of maintenance is a measure of social justice and envisaged under the Constitution to prevent the children from falling into destitution and vagrancy. Preamble of the Constitution and Article 39 and 15 (3) of the Indian Constitution envisage social justice and positive State action for empowerment of women and children. Thus, maintenance being the livelihood even in the absence of any petition by the parties, the Court must order interim maintenance, taking note of the interest of the minor child and in the present case, the child is aged about 5 years old and School going.



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11. This Court has given an option to the respondent to fix maintenance as per his conscience. The learned counsel for the respondent, on instruction, made a submission before this Court that the respondent-father will pay the interim maintenance of Rs.2,000/-(Rupees Two Thousand only) per month to the child. This Court is unable to make any comment at this stage, since the Maintenance Petition is pending before the Family Court, Chennai, for further adjudication.

12. This being the endeavour of this Court to ensure interim maintenance to be paid to the child for her maintenance, the actual maintenance to be determined needs to be adjudicated by the competent Court by affording opportunity to both the parties.

13. In view of the undertaking given by the respondent that he will pay a sum of Rs.2,000/- per month for the maintenance of his child, this Court directs the respondent to pay the said amount of Rs.2,000/- (Rupees Two Thousand only) from December 2022 onwards and the maintenance amount is directed to be paid to the petitioner/wife on or before 5th day of Every Calendar month.



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14. As far as the transfer petition is concerned, the petitioner/wife is working and taking care of the 5 years old child, who is School going. Thus, the cases are to be tried before the Family Court at Chennai.

15. Considering the facts and circumstances, I.D.O.P.No.137 of 2021 pending on the file of the Family Court, Chengalpattu stands transferred to the V Additional Family Court, Chennai to be tried along with M.C.No.525 of 2022. The Family Court, Chengalpattu is directed to transmit the case papers to the V Additional Family Court, Chennai within a period of four (4) weeks from the date of receipt of a copy of this order. The cases are directed to be disposed of as expeditiously as possible.

16. With the above said directions, the Transfer Civil Miscellaneous Petition in TR.CMP.No.804 of 2022 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2022

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Index : Yes
Speaking order



To

- 1.The Judge,
Family Court,
Chengalpattu District.
- 2.The Judge,
V Additional Family Court,
Chennai District.



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S.M.SUBRAMANIAM, J.

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