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Tr.C.M.P.No.828 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.828 of 2022

and

C.M.P.No.14384 of 2022

Keerthi.T

.. Petitioner

vs

Arun.S

.. Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.306 of 2022 on the file of the Hon'ble Sub-Court, Salem and to order transfer of the same to the Hon'ble Family Court at Chennai for trial and disposal.

For Petitioner : Mrs.Y.Kavitha

For Respondent : Mr.P.M.Bakthavatsalam

ORDER

The transfer petition is filed to withdraw the H.M.O.P.No.306 of 2022 on the file of the Sub-Court, Salem and to order transfer of the same to the Family Court at Chennai for trial and disposal.



2. The marriage between the petitioner and the respondent was solemnized on 05.02.2018 as per the Hindu Rites and Customs. A female child was born from and out of the wedlock between the petitioner and the respondent on 12.07.2019 and now aged about three years old. The minor child is now living with the petitioner / mother, who is residing in the residence of her parents at Chennai, NKP Nagar.

3. The respondent filed H.M.O.P.No.306 of 2022 for desolation of marriage on the file of the Sub Court at Salem on the ground of desertion and cruelty.

4. Learned counsel for the petitioner made a submission that as of now, the petitioner is not practising, though she is a Doctor and taking care of her three year old female child. She is residing along with her parents at Chennai and thus not in a position to travel and contest the case for divorce filed by the respondent at the Sub Court, Salem.

5. The learned counsel for the respondent raised an objection by



stating that the petitioner has instituted a domestic violence case proceedings at Chennai, which is pending on the file of the Additional Mahila Court, Chennai. Therefore, there is a livelihood of threat for the respondent and in the event of transferring the case to Chennai, the respondent may not be in a position to contest the case peacefully.

6. It is made clear that the parties are bound to maintain the decorum while contesting the matrimonial case before the Family Court or in any other Court. Both the parties are expected to be law abiding and contest their cases on merits and in accordance with law.

7. Regarding the transfer of the case, the place of the wife is preferable and in the present case, the petitioner has to take care of her three year old female child and therefore, the place of the petitioner is to be considered for the purpose of conducting the matrimonial case.

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:-



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(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:-

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“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. Considering the facts and circumstances, the H.M.O.P.No.306 of 2022 pending on the file of the Sub Court, Salem stands transferred to the



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Family Court, Chennai for speedy disposal.

10. Accordingly, the transfer petition is allowed. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

To

1. The Sub Court, Salem.
2. The Family Court, Chennai.



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S.M.SUBRAMANIAM, J.

(drm)

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