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Tr.C.M.P.No.809 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.809 of 2022

and

C.M.P.No.14056 of 2022

P.Koushika

.. Petitioner

VS

V.Rajkumar

.. Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to pass an order withdrawing the matrimonial proceedings in H.M.O.P.No.116 of 2022 from the file of the Family Court at Villupuram and transfer the same to the file of Sub-Court at Tambaram for trial and adjudication in accordance with law.

For Petitioner : Mr.R.Natarajan

For Respondent : Mr.A.Manojkumar



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ORDER

The transfer petition is filed to withdraw H.M.O.P.No.116 of 2022 from the file of the Family Court at Villupuram and transfer the same to the file of the Sub-Court at Tambaram for trial and adjudication in accordance with law.

2. The marriage between the petitioner and the respondent was solemnized on 27.04.2018 as per the Hindu Rites and Customs. From and out of the wedlock between the petitioner and the respondent, one female child was born and now aged about 3.5 years. The child is suffering from Lipoma in spinal cord and in treatment.

3. The respondent husband filed H.M.O.P.No.116 of 2022 for restitution of conjugal rights, now pending on the file of the Family Court at Villupuram. The learned counsel for the petitioner states that the petitioner is now residing along with her parents and she has to take care of her minor child, who is taking continuous treatment.

4. The child suffers from permanent disability and therefore, the



petitioner has to take care of her child. More over, the petitioner is not employed as of now and she is depending on her parents for her livelihood and for the medical treatment of the differently abled child. Under these circumstances, she is not in a position to spend, travel and contest the case filed by the respondent on the file of the Family Court at Vilupuram.

5. The respondent Mr.V.Rajkumar is present before this Court and learned counsel for the respondent made a submission that in the event of transferring, there is a livelihood of threat by the family members of the petitioner. The respondent, in person, made a submission that he is ready and wiling to maintain the child and he will pay a sum of Rs.5,000/- towards the interim maintenance per month and further he will purchase and handover the medicines and other medical equipments for his daughter as per the prescription of the Doctors

6. 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



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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 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



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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.”

7. The interest of the minor child is to be protected by the Courts.

Whenever a minor child is with the custody of the unemployed mother, even in case if the mother is employed, the father is liable to maintain the minor child and the Courts will not allow the father to shift his responsibility of maintenance of the minor child. Even in the absence of any application, the Court can consider the grant of interim maintenance and subsequently maintenance is to be determined, if at all any application is filed seeking



maintenance in provisions of the statute.

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8. Grant of interim maintenance in the present petition is not a bar for the petitioner to claim maintenance for herself and to the minor child.

9. For grant of interim maintenance to the minor children, no 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.

10. 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.

11. 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.

12. 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 burned 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.



13. Considering the facts and circumstances, this Court is inclined to pass the following orders:

(i) H.M.O.P.No.116 of 2022 pending on the file of the Family Court at Villupuram stands transferred to the Sub-Court Tambaram.

(ii) The respondent, as per his undertakings, is directed to pay a sum of Rs.5,000/- towards the interim maintenance to the minor child, which is to be paid on or before the 10th day of every calender month.

(iii) The petitioner is directed to communicate the medical prescription of the child to the respondent, enabling him to purchase the medicines and other medical equipments for the treatment of the child.

(iv) All other disputes are to be resolved in the



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matrimonial cases pending before the competent Court.

(v) In the event of non-payment of the interim maintenance by the respondent, the petitioner is at liberty to initiate contempt proceedings before this Court.

14. The learned counsel for the petitioner made a submission that the petitioner may not have any objection to provide visitation rights to the respondent. In this regard, the learned counsel for the petitioner, in consultation with the petitioner, inform the place, day and time to the respondent and inform the same in advance, enabling him to visit the minor child for about two to three hours on that day. The visitation rights is to be given twice a month to the respondent.

15. The Family Court, Villupuram is directed to transmit the case papers within a period of four weeks from the date of receipt of a copy of this order.

16. Accordingly, the transfer petition stands allowed. There will be no



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order as to costs. Consequently, connected miscellaneous petition is closed.

22.12.2022

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Index : Yes / No

Speaking order / Non-speaking order

To

1. The Family Court, Villupuram.

2. The Sub-Court, Tambaram.



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S.M.SUBRAMANIAM, J.

(drm)

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and
C.M.P.No.3890 of 2022

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