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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2022

Pronounced on : 14.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

Tr.C.M.P.No.813 of 2021

S.Ramesh Sannilo

... Petitioner

Versus

R.Kalpana

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the H.M.O.P.No.319 of 2017 and M.C.No.197 of 2017 pending before the Principal Family Court at Coimbatore to 1st Additional Family Court, Coimbatore.

For Petitioner : Ms. S. Vennila

For Respondent : Mr.I.Abrar Md.Abdullah

ORDER

[The Case has been heard through video conference]

The husband has filed the present Tr.C.M.P.No.813 of 2021 seeking to transfer the H.M.O.P.No.319 of 2017 and M.C.No.197 of 2017 pending before the Principal Family Court at Coimbatore, to the file of 1st Additional Family Court, Coimbatore.

2. On perusal of the affidavit filed in support of the Transfer Civil Miscellaneous Petition, it is seen that the marriage between the petitioner and the respondent was solemnized as per Hindu rites and customs on 30.08.2007 at Andhra Pradesh followed by a reception on 02.09.2007 at Coimbatore. After marriage, both the petitioner and the respondent resided in the matrimonial home at Karnool District, Andrapradesh, where, it is alleged, that the respondent resided only for two days. On the 3rd day of marriage, the respondent deserted the matrimonial company of the petitioner and was living with her parents. The petitioner appeased and cajoled the



respondent to return to the matrimonial home, however, the father of the petitioner as well as the respondent insisted the petitioner to stay in their house. The petitioner has also reluctantly agreed and stayed in the house of the father of the respondent. Due to the wedlock, two children have been born and the matrimonial life was peaceful and blissful for some time. In the year 2011, it is alleged that the petitioner /husband was ill-treated by the respondent and her father and was driven out of the house. Thereafter, the respondent filed H.M.O.P.No.699 of 2012 for restitution of conjugal rights before the Principal Judge, Family Court, Coimbatore as if the petitioner deserved her, however, she subsequently withdrew it on 18.09.2015. It is also stated that the respondent filed D.V.A.No.18 of 2014 before the Judicial Magistrate Court No.V, Coimbatore, against the petitioner and his family members and it was stayed by this Court in Crl.O.P.No.3577 of 2015. Further, the respondent filed M.C.No.137 of 2013 for maintenance even though she herself earns more than Rs.10 lakhs per month and an assessee under the Income Tax Act. However, she withdrew M.C.No.137 of 2013 on 02.09.2016. Later, she filed another M.C.No.197 of 2017 and it is pending. The respondent also given a police complaint and the petitioner was called upon in the guise of enquiry and harassed. Finally, the petitioner himself has filed H.M.O.P.No.319 of 2017 for the relief of dissolution of marriage, before the Principal Family Court, Coimbatore and it is pending.

3. The learned counsel for the petitioner mainly contended that the Presiding Officer namely, the Principal Judge, Family Court, Coimbatore is conducting the proceedings much to the Chagrin of the petitioner. It is the specific submission of the counsel for the petitioner is that the Presiding Officer has colluded with the respondent and in all likelihood, the H.M.O.P.No.319 of 2017 filed by the petitioner will be dismissed. In other words, it is stated that the petitioner has no confidence in the learned Principal Judge, Family Court, Coimbatore that he would render a free and fair judgment in HMOP No. 319 of 2017. The reason being the Presiding Officer is periodically adjourning the case and there is no progress in the original petition filed by the petitioner which is causing acute prejudice to him. Therefore, the present Transfer Civil Miscellaneous Petition is filed for transfer of H.M.O.P.No.319 of 2017.

4. On the above contention, this Court heard the learned counsel for the respondent and perused the materials placed on record.

5. The main grievance projected by the petitioner for HMOP is that the Presiding Officer periodically adjourn the case and there is no progress shown in the original petition filed by



him. It is needless to mention that the original petition was filed by the petitioner on 01.03.2017. Pending OP, it appears that the petitioner has filed I.A.No.567 of 2017.

6. On perusal of the docket order passed by the Court of the Principal Family Judge it is seen that the original petition was periodically adjourned. At the same time thereof indicates that on several dates, the petitioner himself was absent and therefore the Original Petition was adjourned. In any event, the petitioner himself was absent for quite number of hearings and therefore it cannot be said that the adjournments were granted only at the instance of the respondent.

7. It is further seen from the records that the respondent has not filed the counter and therefore she was set ex-parte on 20.11.2019. Later ex-parte evidence itself was closed on 05.02.2021. The delay between 20.11.2019 and 05.02.2021 is due to the spread of COVID 19 pandemic which resulted in closure of the Subordinate Court for a brief period. In any event, after closure of the ex-parte evidence on 05.02.2021, the respondent/wife has filed a petition for re-opening the H.M.O.P.No.319 of 2017. In the light of the aforesaid facts, this Court is of the view that the averments made by the petitioner that the Presiding Officer has colluded with the respondent does not cut ice with this Court. The petitioner has filed this petition by casting aspersions against the Presiding Officer, however, such allegations made by the petitioner were largely unsubstantiated. Merely because the Court below granted periodical adjournments cannot be ipso facto be a ground for consideration to transfer the Original Petition filed by the petitioner. Furthermore, on an earlier occasion, this Court has granted an ultimatum to dispose of the Original Petition, however, the time limit has not been adhered to due to various reasons. While so, if the prayer sought for in this Transfer Civil Miscellaneous Petition is granted, it would amount to accepting the allegations raised by the petitioner against the Presiding Officer. Thus, the averments made by the petitioner in this Petition have not been proved to the satisfaction of this Court and therefore, the relief sought for in this Transfer Civil Miscellaneous Petition cannot be granted.

8. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. As mentioned above, this Court has already granted a time limit for disposal of the Original Petition. Having regard to the above, the learned Principal Judge, Family Court at Coimbatore is directed to wrap up the entire proceedings in H.M.O.P.No.319 of 2017 and M.C.No.197 of 2017 pending before it within a period of five months from the date of receipt of a copy of this order. The respondent/wife is directed to co-operate with the Court for concluding the



evidence on either side and for speedy disposal within the time frame fixed by this Court.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gbi

To:

1. The Judge,
The Principal Family Court,
Coimbatore.

+1cc to Ms. S. Vennila, Advocate, S.R.No.9374

+1cc to Mr.I.Abrar Md.Abdullah, Advocate, S.R.No.9494

Tr.C.M.P.No.813 of 2021

NK(CO)
CT 28/02/2021