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Tr.C.M.P.No.797 of 2021 and Tr.C.M.P.(MD)No.443 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2022

Pronounced on : 07.07.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Tr.C.M.P.No.797 of 2021
&
Tr.C.M.P.(MD)No.443 of 2021
and
C.M.P. Nos. 20342 & 18575 of 2021
C.M.P.(MD).No.8560 of 2021
and
C.M.P. Nos. 9068, 10190 & of 2022

Tr.C.M.P.No.797 of 2021

J.Krishna Raja

.. Petitioner

Versus

1.G.Babitha
2.Minor Vivaan Prathik

.. Respondents

Tr.C.M.P.(MD)No.443 of 2021

G.Babitha

.. Petitioner

Versus

J.Kirshna Raja

.. Respondent



Tr.C.M.P.No.797 of 2021 and Tr.C.M.P.(MD)No.443 of 2021

Prayer in Tr.C.M.P.No.797 of 2021: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the case in M.C.No.114 of 2021 pending on the file of the Family Court, Madurai and transfer the same to the file of the I Additional Family Court, Chennai to be tried along with H.M.O.P.No.3024 of 2021.

Prayer in Tr.C.M.P.(MD)No.443 of 2021: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.3204 of 2021 pending on the file of the learned I Additional Family Court, Chennai and transfer to the file of the Learned Family Court, Madurai.

Tr.C.M.P.No.797 of 2021:

For petitioner : Mr.T.Srikrishna Bhagavat

For R1 : Mr.S.Devasena

For R2 : R2 – Minor (Rep by R1)

Tr.C.M.P.(MD)No.443 of 2021:

For petitioner : Mr.S.Devasena

For respondent : Mr.T.Srikrishna Bhagavat

COMMON ORDER

The petitioner/wife has filed Tr.C.M.P.(MD)No.443 of 2021 seeking to transfer H.M.O.P. No.3204 of 2021 filed by the respondent/husband pending on the file of the I Additional Family Court, Chennai and to transfer it to the file of the Family Court, Madurai to be tried along with M.C. No. 114 of 2021 filed by her.



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2. The petitioner/husband has filed Tr.C.M.P. No. 797 of 2021 praying to withdraw M.C. No. 114 of 2021 filed by the respondent-wife before the Family Court, Madurai and to transfer it to the file of the I Additional Family Court, Chennai to be tried along with H.M.O.P.No.3204 of 2021 filed by him.

3. As Tr. C.M.P. (MD) No.443 of 2021 was filed before the Madurai Bench of this Court, at the instance of the learned counsel for the petitioner/husband, the Tr.C.M.P. (MD) No.443 of 2021 filed by the wife was sought to be transferred to the Principal Bench of this Court to be tried along with Tr. C.M.P. No.797 of 2021 filed by the petitioner/husband. By an order dated 04.03.2022 passed by the Hon'ble The Chief Justice, Tr. C.M.P. (MD) No. 443 of 2021 filed by the respondent-wife was directed to be posted before this Court to be tried along with Tr. C.M.P. No.797 of 2021 filed by the petitioner/husband.

4. The petitioner/husband has filed H.M.O.P. No. 3204 of 2021 contending *inter alia* that the marriage between him and the respondent/wife was solemnized on 18.11.2020 at Checkers Hotel, Saidapet, Chennai - 15. He further stated that the marriage was a love marriage and both the petitioner and



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the respondent knew each other five years before the marriage. Since their marriage was opposed by the family of the respondent/wife, it was the petitioner who spent the entire amount was the purpose of commemorating their marriage. It is also stated that except the brother of the respondent/wife none from the side of the respondent/wife attended the marriage. According to the petitioner, his mother was working in India Post at Madurai and during 2012 she got transferred to Chennai and living along with him. During August 2013, the respondent/wife become pregnant. At that time, the respondent expressed her dis-inclination to live with her mother-in-law and demanded that she be sent out of home. To ensure that the health of the respondent/wife is not affected during her pregnancy, the petitioner sent his mother to a Working Women's Hostel. His mother used to visit the matrimonial home on and of and even that was not to the liking of the respondent. On 01.05.2014, a male child was born christened as Vivaan Prathik and even after the birth of the child, the respondent/wife did not permit his mother to stay in the matrimonial home. Therefore, his mother used to come see the grand-son only after getting permission from the respondent/wife and stay in the matrimonial home for a day or two. However, due to old age, his mother fell ill and therefore, the petitioner brought his mother and made her to stay with him at the matrimonial home. Infuriated, the respondent, on 21.12.2014, left the matrimonial home by



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taking with her all her articles. During 2016, the respondent/wife got an employment at Bangalore and the petitioner was working at Chennai. The petitioner frequently met the respondent at Bangalore and convinced her to return to the matrimonial home atleast for the sake of future of the minor child. However, the respondent/wife did not agree. In this context, it is stated that there were frequent altercation and quarrel among the couple and ultimately the petitioner/husband has filed the original petition seeking dissolution of the marriage on the ground of cruelty and desertion.

5. In the meantime, the respondent-wife has filed M.C. No. 114 of 2021 before the Family Court, Madurai seeking maintenance for herself and the minor son.

6. Subsequently, the respondent/wife filed Tr.C.M.P.(MD)No.443 of 2021 before the Madurai Bench of the Madras High Court seeking transfer of H.M.O.P. No. 3204 of 2021 filed by the petitioner/husband to be tried along with M.C. No. 114 of 2021 filed by her seeking maintenance.

7. According to the respondent/wife, it was the mother of the petitioner who was instrumental for the matrimonial discord. Further, the



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petitioner/ husband deserted her after the birth of the child. At the same time, the respondent/wife admitted having secured an employment in Bangalore during 2016. It was stated that when the son was 2 ½ years old, it was noticed that he is suffering from walking disorder and it was the respondent/wife who spent for the treatment. Now, the minor child is 7 ½ years old and studying 2nd standard in Sorsfort International School, Bangalore. It was the respondent who is taking care of the minor child and spending for his education all along. The petitioner/husband is duty bound to maintain the respondent/wife and the minor child. The petitioner/husband is working in HSBC Bank, Chennai and earning not less than Rs.1,50,000/- per month. Taking note of the cost of living, educational expenses and medical expenses of the minor, the respondent filed the maintenance case and sought for maintenance of a sum of Rs.25,000/- per month to her apart from Rs.20,000/- towards litigation expenses.

8. The learned counsel for the petitioner/husband submitted that the petitioner has filed Tr. C.M.P. No.797 of 2021 in which it was specifically contended that even though the respondent/wife is employed in Bangalore, whimsically, she has given the address as if she is residing along with his mother at Madurai. The respondent/wife is not residing at Madurai and only to harass the petitioner, she has filed the maintenance case before the Family



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Court, Madurai. The convenience of parties can be secured if the maintenance case filed by the respondent/wife is transferred from Family Court, Madurai to the file of the I Additional Family Court, Chennai. In such event, the respondent/wife, who is working in Bangalore, will not have any grievance and it will also be convenient for her to attend the hearings in both the original petition filed by him as well as the maintenance case filed by her. On the other hand, if the Tr.C.M.P. (MD) No.443 of 2021 filed by her is allowed, it will cause inconvenience for both the petitioner as well as respondent in travelling to Madurai. Therefore, interest of justice will be secured if Tr.C.M.P.No.797 of 2021 is allowed and by dismissing Tr.CMP (MD) No. 443 of 2021 is dismissed.

9. On the above contention, the learned counsel for the respondent/wife submitted that she is residing in the house of her mother at Madurai. Therefore, M.C. No. 114 of 2021 was filed by her before the Family Court, Madurai and it is proper. While considering transfer applications, the convenience of the parties has to be examined and in that event, the Tr. C.M.P. No. 797 of 2021 filed by the petitioner/husband deserves rejection.

10. Heard the learned counsel appearing for the petitioner as well as



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the respondent and perused the materials available on record.

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11. In Tr. C.M.P. (MD) No. 443 of 2021 filed by the respondent/wife, absolutely there is no averments as to whether the respondent is staying in Madurai or what prompted her to file the Maintenance Case before the Family Court at Madurai. On the other hand, the respondent herself admitted that she is residing in Bangalore, the minor son is studying in a school at Bangalore and she is also employed in a company at Bangalore. While so, it can be safely presumed that only to harass the petitioner-husband, the respondent-wife has filed M.C.No.114 of 2021, seeking maintenance, at Family Court, Madurai. On the other hand, admittedly, the petitioner/husband is working in Chennai. While exercising jurisdiction under Section 24 of the Code of Civil Procedure, it is trite that convenience of the parties has to be weighed and considered. A discretion is given to this Court to consider transfer of a proceeding from one Court to another taking note of the averments made for such transfer. On a consideration of the averments in these cases, this Court is convinced that the filing of Maintenance Case by the respondent-wife at Family Court, Madurai when she is residing and employed at Bangalore is not proper. Even in the Transfer CMP (MD) No. 443 of 2021 filed by the respondent-wife, absolutely, there is no averment made as to why the H.M.O.P. No. 3204 of 2021 filed by



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the petitioner-husband has to be transferred to Family Court, Madurai. It is also not made known as to how it will be convenient for the petitioner as well as the respondent in the event of H.M.O.P. No. 3204 of 2021 filed by the petitioner-husband is transferred to Family Court, at Madurai. The fact remains that the petitioner-husband is employed and residing at Chennai and the respondent-wife is also employed and residing at Bangalore. Therefore, if the convenience of the parties to attend both the proceedings at the same Court is weighed and taken into consideration, both the maintenance case and the original petition filed by the petitioner/husband have to be transferred to Court of I Additional Family Court, Chennai so that convenience of both the parties will be ensured. The respondent/wife instead of attending the proceedings relating to maintenance filed by her at Madurai, it will be quite convenient for her to attend the said case at Chennai from Bangalore. Therefore, having regard to the convenience of the parties Tr.C.M.P.No.797 of 2021 filed by the petitioner/husband has to be allowed by dismissing the Tr.C.M.P.(MD)No.443 of 2021 filed by the respondent/wife.

12. In the result, Tr.C.M.P.No.797 of 2021 is allowed directing transfer of M.C.No.114 of 2021 filed by the respondent/wife at Family Court, Madurai to the file of the I Additional Family Court, Chennai to be tried along



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with H.M.O.P.No.3024 of 2021 filed by the petitioner/husband. Consequently,

Tr.C.M.P.(MD)No.443 of 2021 filed by the respondent/wife stands dismissed.

No Costs. Consequently, connected Miscellaneous Petitions are closed.

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07.07.2022

Internet : Yes / No

Index : Yes / No

To:

1.The Judge,
Family Court,
Madurai.

2.The Judge,
I Additional Family Court,
Chennai.



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S.KANNAMMAL, J.,

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Pre-delivery Judgment in
Tr.C.M.P.No.797 of 2021 and Tr.C.M.P.(MD)No.443 of 2021

07.07.2022