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Tr.C.M.P.No.1067 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1067 of 2022

and

C.M.P.No.18326 of 2022

S.Udhayanan

... Petitioner

Vs.

Smt.Abirami

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdrawn the above H.M.O.P.No.30 of 2022 pending on the file of the learned Family Court, Pondicherry and transfer to the same to the Subordinate Court in Cheyyar.

For Petitioner : M/s.R.Abirami

For Respondent : Mr.M.Selvam



ORDER

The petition for transfer is filed to withdraw and transfer the H.M.O.P.No.30 of 2022 pending on the file of Family Court, Pondicherry to the file of Subordinate Court, Cheyyar.

2. The marriage between the petitioner and the respondent was solemnised on 19.03.2018 as per the Hindu Rites and Customs. A male child, now aged about three years, was born from and out of wedlock between the petitioner and the respondent and the child is living with the respondent/mother. The respondent/wife filed H.M.O.P.No.30 of 2022 on the file of Family Court, Pondicherry for dissolution of marriage. The petitioner/husband had filed H.M.O.P.NO.63 of 2022 on the file of Subordinate Court, Cheyyar for Restitution of Conjugal Rights.

3. The learned counsel for the petitioner made a submission that the petitioner/husband is taking medical treatment and advised not to travel.

4. The learned counsel for the respondent objected the said contention by stating that the respondent is unemployed and have to take care of her



three years old child and now she is depending on her parents for her livelihood. That being the case, she is not in a position to travel and contest the case filed by the petitioner in HMOP.No.63 of 2022 before the Subordinate Court, Cheyyar. Therefore, transfer petition is to be objected.

5. Preference is to be granted in respect of the place of the wife as per the Judgment of the Courts. More so, in the present case, the respondent/wife is unemployed and taking care of her three years old child.

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 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:-

"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.”

7. Considering the facts and circumstances, the claim of the petitioner to transfer the case deserves no merit consideration. However, the fact remains that the petitioner filed H.M.O.P.No.63 of 2022, which is now pending on the file of Subordinate Court, Cheyyar. In the interest of justice, this Court is inclined to transfer the said case to Family Court, Pondicherry.

8. Accordingly, the H.M.O.P.No.63 of 2022 now pending on the file of Subordinate Court, Cheyyar stands transferred to the Family Court, Pondicherry to be tried along with H.M.O.P.No.30 of 2022. The Subordinate Court, Cheyyar, is directed to transmit the case papers to the Family Court, Pondicherry, within a period of four (4) weeks from the date of receipt of a copy of this order. The Family Court, Pondicherry is directed to dispose of the petitions as expeditiously as possible.



9. With the abovesaid directions, the Transfer Civil Miscellaneous
Petition stands disposed of. However, there shall be no order as to costs.
Consequently, the connected miscellaneous petition is closed.

08.12.2022

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Index : Yes / No

Speaking order / Non-speaking order

To

1.The Judge,
Family Court, Pondicherry.

2.The Judge,
Sub-Court, Cheyyar.



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S.M.SUBRAMANIAM, J.

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