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Tr CMP.No. 1009 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr C.M.P. No. 1009 of 2022

M. Vijayakumar

... Petitioner

Vs

Savithiri

... Respondent

Prayer : Transfer Civil Miscellaneous Petition filed under Section 24 of the C.P.C. To withdraw the HMOP No. 27 of 2022 pending on the file of the Family Court, Pudukottai and to transfer Additional Family Court, Coimbatore tried along with HMOP No. 1928 of 2021 on the file of Additional Family Court, Coimbatore.

For Petitioner : Mr. Kalaivanan
for Mr. K. Sudhakar

For Respondent : Mrs. V. Sugana
for Mr. J. Ramkumar



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ORDER

The marriage between the petitioner and the respondent was solemnized on 18.10.2020 as per the hindu rites and customs. Due to misunderstanding, the petitioner and the respondent are living separately. The respondent wife filed HMOP.No. 27 of 2022 for restitution of conjugal rights, now pending on the file of Family Court, Pudukottai. Before the filing of the restitution petition, the petitioner husband filed HMOP No. 1928 of 2021 for dissolution of marriage on the file of the learned Additional Family Court, Coimbatore.

2. Learned counsel for the petitioner husband made a submission that the transfer petition filed by the wife earlier in Tr.CM.P.No. 39 of 2022 was dismissed by this Court on 22.03.2022, on the ground that the restitution of conjugal rights petition was filed by the respondent wife, when the transfer OP is pending before the High Court. However, the present Tr CMP is filed by the husband seeking transfer of the HMOP No. 27 of 2022 to Coimbatore. Thus, the earlier transfer petition filed by the wife is no way connected with the present transfer petition filed by the husband seeking transfer. Dismissal of one transfer petition filed by the wife cannot be a



ground to allow the transfer petition filed by the husband and therefore this Court has to consider the principles to be followed for transferring of cases from one court to another.

3. Transfers are to be made in the interests of justice and by considering the inconvenience and prejudices to be caused if the cases are tried by two different courts.

4. In the present case, the respondent wife left the matrimonial home from Coimbatore and now residing along with her parents at Pudukkottai. She has filed a petition for restitution on the file of the Family Court at Pudukkottai.

5. Learned counsel for the respondent wife made a submission that she is unemployed and depending on her parents and thus she is not in a position to spend travel and contest the case filed by the petitioner for dissolution of marriage on the file of the learned Additional Family Court at Coimbatore.



6. Intention of the parties in filing the matrimonial cases are irrelevant for the purpose of considering the transfer application filed to transfer cases from one court to another court. Transfers are ordered to avoid contrary judgments and to maintain consistency in judicial decisions. Thus, the intention for institution of matrimonial cases may not be the relevant consideration for the purpose of effecting transfer of cases. Matrimonial case are mostly instituted on emotions and based on certain social societal implications. Courts are not expected to get carried away with such emotions or otherwise. Every litigant is entitled to approach the court which is a fundamental right under the constitution. Thus the mere approach to a court would not be a ground to make a person dis-entitled from getting a relief.

7. In the present case, the petitioner husband filed an application for dissolution of marriage. The respondent wife filed a petition for restitution. It is for the parties to make an attempt for matrimonial reunion since the wife expressed her willingness for restitution. Matrimonial bonding is bundle of emotions, which is to be resolved between the parties and therefore, the parties are at liberty to go for conciliation and make an attempt for reunion. As far as the present transfer petition is concerned, the place of residence of the wife is preferable for conducting the trial, in view of the



amendment in Hindu Marriage Act and also based on the principles laid down by the Courts.

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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:-

(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 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.”

9. In the present case, the respondent wife is unemployed and dependent on her parents. By filing the present transfer petition, the petitioner also has intentionally attempting to harass the respondent wife knowing the fact that she is unemployed and she has to travel from Pudukottai to Coimbatore for the purpose of contesting the two cases.

10. Considering the facts and circumstances, HMOP No. 1928 of 2021 pending on the file of the Additional Family Court, Coimbatore stands transferred to Family Court, Pudukkottai to be tried along with HMOP No. 27 of 2022 as expeditiously as possible. Transfer petition stands disposed of. No costs.

11. The parties are bound to maintain respect towards the court proceedings while attending the cases. Consequently, connected CMP.No. 17265 of 2022 is closed.

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Index : Yes / No



Speaking order / Non-Speaking order
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To
The Family Court,
Pudukottai

The Additional Family Court,
Coimbatore

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S.M.SUBRAMANIAM, J.

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