



Tr.CMP No.1032 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-12-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1032 of 2022

and

C.M.P.No.17763 of 2022

S.M.Gnanapriya

.. Petitioner

vs.

Sivabalan

.. Respondent

PRAYER : This Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.154 of 2022 from the file of the Additional Sub Court at Hosur, Krishnagiri District and transfer the same to the file of the Sub Court at Thiruthani.

For Petitioner : Mr.U.Manogar

For Respondent : Mr.P.Venugopal



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ORDER

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The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in in HMOP No.154 of 2022 from the file of the Additional Sub Court at Hosur, Krishnagiri District and transfer the same to the file of the Sub Court at Thiruthani.

2. The marriage between the petitioner and the respondent was solemnised on 22.06.2011 as per the Hindu Rites and Customs. A female child was born from and out of the wedlock between the petitioner and the respondent and now aged about 10 years old.

3. The learned counsel for the petitioner states that the petitioner is unemployed and both the petitioner and her minor female child are residing along with her parents. The petitioner has to take care of her school going 10 year old female minor child and they are depending on her parents. Under these circumstances, she is not in a position to travel all along from Thiruthani to Hosur and contest the case in HMOP No.154 of 2022 filed by the



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respondent for dissolution of marriage now pending on the file of the Additional Sub Court at Hosur, Krishnagiri District.

4. Beyond the divorce case, other two proceedings in Crl.RC No.14 of 2021 and Gardian OP No.376 of 2021 are pending before the Principal District Court at Thiruvallur for adjudication. Under these circumstances, the learned counsel for he respondent made a submission that in the event of transferring the HMOP to the Family Court at Thiruvallur, it may be convenient to both the parties for conducting all the three cases in the same Court premises at Thiruvallur.

5. It is brought to the notice of this Court that the maintenance petition filed by the petitioner-wife was ordered and a sum of Rs.29,000/- was awarded as monthly maintenance both to the petitioner and to the minor child. The said order was taken by way of an appeal by the respondent in Crl.RC No.14 of 2021, which is pending on the file of the Principal District Court at Thiruvallur.



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6. Maintenance is the livelihood. The petitioner-wife is unemployed. Remedy of maintenance is a measure of social justice as envisaged under the Constitution of India. Preventing the wives and children from falling into the destitution and vagrancy. Therefore, even in the absence of any application, the Courts have to consider the grant of interim maintenance if any child is if maintained by the mother, who is unemployed.

7. Interim maintenance being the livelihood, which is the facet of Article 21 of the Constitution of India. Such right cannot be denied by the Courts while dealing with the matrimonial disputes and the maintenance petitions.

8. In the present case, the petitioner filed maintenance petition in the year 2018, which was allowed by the Judicial Magistrate at Thiruthani and a revision was filed by the respondent-husband before the District Court at Thiruvallur, which is altogether pending for the past about four years.



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During the past four years, the respondent-husband is not paying any maintenance either to the petitioner-wife or to the daughter, who is now 10 years old minor female child. Such a situation, at no circumstances, be accepted by the Courts. In all such circumstances, the Courts are expected to grant interim maintenance in the interest of the minor children, who all are in the custody of the unemployed wives. Even in respect of unemployed wives, the father is liable to share the expenses by paying the regular maintenance amount.

9. The Courts must have a humane approach and considered the cases based on the Fundamental Rights enunciated under the Constitution of India. Life does not mean a mere life or in some life itself. Life is enshrined under Article 21 of the Constitution of India and thus father, who is responsible for the maintenance of his own child and he must pay monthly maintenance even during the matrimonial disputes between himself and his wife.



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10. It is unfortunate that in the present case though the maintenance petition was filed in the year 2018, it was allowed during the year 2021, the respondent-husband has chosen to file an appeal and not paid even interim maintenance to the child, who is his own daughter. If the situation continues in this manner, the trust on the Judicial System will be shaken and the Courts must deal with such petitions sharply and considering the emotions, difficulties and other practical aspects in a pragmatic manner, so as to ensure that the maintenance are being paid to the minor children to save their lives and to protect their interest for pursuing their education and other aspects.

11. The learned counsel for the respondent fairly made a submission that the respondent has to pay maintenance in such circumstances. Already a sum of Rs.29,000/- was awarded by the learned Judicial Magistrate, Thiruthani towards maintenance, which is now the subject matter in Criminal RC No.14 of 2021.

12. Under these circumstances, this Court is inclined to direct the



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respondent to pay the interim maintenance of Rs.15,000/- per month from December 2022 onwards and regarding the grant of final maintenance, the District Court may consider and take appropriate decisions. There is no impediment for the petitioner to pursue the Execution Petition now pending before the Judicial Magistrate, Thiruthani to recover the arrears of maintenance and the maintenance amount initially awarded by the learned Judicial Magistrate, Thiruthani.

13. The interim maintenance granted by this Court in the present Transfer Civil Miscellaneous Petition is only to safeguard the interest of the minor child now under the custody of the petitioner-wife and this will not be an impediment for the petitioner-wife claiming arrears of maintenance or enhance maintenance or otherwise by following the procedures.

14. The Additional District Court at Thiruvallur is requested to dispose of the CrI.RC No.14 of 2021 within a period of one month from the date of receipt of a copy of this order, since the case has already been posted

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for passing orders.

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15. As far as the present Transfer Civil Miscellaneous Petition is concerned, this Court is of the considered opinion that the HMOP also to be transferred to the Family Court at Thiruvallur, which would be convenient for the petitioner and the respondent to conduct all cases in the same District Court premises at Thiruvallur.

16. Accordingly, HMOP No.154 of 2022 pending on the file of the Additional Sub Court at Hosur, Krishnagiri District is transferred to the file of the Family Court at Thiruvallur. The Additional Sub Court at Hosur, Krishnagiri District is directed to transmit the case papers relating to HMOP No.154 of 2022 to the file of the Family Court at Thiruvallur within a period of four weeks from the date of receipt of a copy of this order. The Additional Sub Court at Hosur, Krishnagiri District is requested to dispose of the same as expeditiously as possible. The interim maintenance granted by this Court is to be punctually paid by the respondent on or before the 7th day of every

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calendar month with effect from December 2022 onwards.

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17. 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.

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Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

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To

1.The Additional Sub Judge,
Additional Sub Court at Hosur,
Krishnagiri District.

2.The Sub Judge,
Sub Court at Thiruthani,
Thiruvallur District.

S.M.SUBRAMANIAM, J.

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3.The Judge,
Family Court,
Thiruvallur.

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