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Tr.C.M.P.No.1065 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1065 of 2022

and

C.M.P.No.18313 of 2022

S.Selvi

... Petitioner

Vs.

Sakthivel

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.98 of 2022 on the file of Family Court, Salem and to transfer the same to the file of Subordinate Court, Harur, Dharmapuri District.

For Petitioner : Mr.C.Prabakaran

For Respondent : No Appearance



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ORDER

The petition for transfer is filed to withdraw the H.M.O.P.No.98 of 2022 on the file of Family Court, Salem and to transfer the same to the file of Subordinate Court, Harur, Dharmapuri District.

2. The marriage between the petitioner and the respondent was solemnised on 08.06.2011 as per the Hindu Rites and Customs. From and out of the wedlock between the petitioner and respondent two children were born and they are aged about 10 years and 7 years respectively. Due to misunderstanding, the petitioner and the respondent are living separately. The petitioner is unemployed and she is residing with her parents and she has to take care of her two children. Therefore, she is not in a position to spend, travel and contest the case filed by the respondent in H.M.O.P.No.98 of 2022 for divorce before the Family Court, Salem.

3. This Court is of an opinion that wherever the wife is unemployed and has to maintain, the Court concerned is expected to grant interim maintenance to protect the livelihood of the minor children, which is a basic right under Article 21 of the Constitution of India.



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4. Maintenance being the livelihood of a child and Right to Life being an integral part of Article 21 and a Fundamental Right, the Courts are bound to interfere in such circumstances and ensure that the maintenance of the children are protected at all circumstances even during the sustenance of the Matrimonial dispute between the husband and wife. The agony of the child and its mental condition during the period of dispute between father and mother, all to be taken note of and the interim maintenance is to be ordered by the Courts even if there is no application or otherwise.

5. This Court is of the considered opinion that the disputes are no way connected with the maintenance of a minor child. Dispute between the husband and wife is to be resolved in the manner known to law or they can go for Conciliation for reunion or otherwise. However, the interest of the minor child is of paramount importance and the Courts are bound to protect the interest of the minor children at all circumstances.

6. Remedy of maintenance is a social justice as envisaged under the Constitution to prevent the child from falling into destitution or vagrant. Therefore, even in the absence of application seeking maintenance, the



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Courts are bound to consider the grant of interim maintenance whenever a child is residing with the mother, who is not employed. Even in case, the mother is employed, the father has to share the maintenance in respect of the minor. Thus, the Family Courts or the Courts dealing with the matrimonial cases are bound to consider the grant of interim maintenance even in the absence of any application from the mother till such time the final maintenance is to be determined after adjudication.

7. In all such cases, the Courts are directed to look into the issues and consider for grant of interim maintenance to protect the livelihood of the children residing with the unemployed mother.

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:-



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“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,*



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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:-

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“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. Considering the facts and circumstances, the H.M.O.P.No.98 of 2022 pending on the file of the Family Court, Salem stands transferred to the Subordinate Court at Harur, Dharmapuri District forthwith. The Family Court, Salem is directed to transmit all the case papers to the Subordinate Court at Harur, Dharmapuri District to be tried along with H.M.O.P.No.52



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of 2022 within a period of four (4) weeks from the date of receipt of a copy
of this order.

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10. With the abovesaid directions, the Transfer Civil Miscellaneous

Petition stands allowed. However, there shall be no order as to costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes

Speaking order

To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Subordinate Court,
Harur,
Dharmapuri.



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S.M.SUBRAMANIAM, J.

Jeni

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