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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.1091 of 2022
and
C.M.P.No.18706 of 2022

Mrs.Sevanthi ... Petitioner

Vs.

Mr.N.Nandha Kumar ... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in O.P.No.218 of 2021 on the file of Family Court, Krishnagiri, to transfer and Club together with the F.C.O.P.No.97 of 2022, on the file of the Family Court, Thiruvannamalai District.

For Petitioner : Mr.D.Ramesh Kumar
For Mr.S.Silambuselvan

For Respondent : Mr.U.Manogar

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O R D E R

The petition for transfer is filed to withdraw the case in O.P.No.218 of 2021 on the file of the Family Court, Krishnagiri and transfer the same to to the Family Court, Thiruvannamalai District to be tried along with the F.C.O.P.No.97 of 2022.

2. The marriage between the petitioner and the respondent was solemnised on 29.10.2020 as per the Hindu Rites and Customs. 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 livelihood. Therefore, she is not in a position to spend, travel and contest the case filed by the respondent in O.P.No.218 of 2021 for divorce before the Family Court, Krishnagiri. The petitioner filed F.C.O.P.No.97 of 2022 on the Family Court, Coimbatore.

3. 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:-

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(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*

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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*

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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."*

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(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."*

4. Considering the facts and circumstances, O.P.No.218 of 2021 pending on the file of Family Court, Krishnagiri stands transferred to Family Court, Thiruvannamalai forthwith. The Family Court, Krishnagiri is directed to transmit case papers to the Family Court, Thiruvannamalai to be

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tried along with F.C.O.P.No.97 of 2022, within a period of four (4) weeks from the date of receipt of a copy of this order.

5. 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.

14.12.2022

Jeni
Index : Yes
Speaking order

To

1.The Judge,
Family Court,
Krishnagiri.

2.The Judge,
Family Court,
Thiruvannamalai.

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S.M.SUBRAMANIAM, J.

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