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Tr.C.M.P.No.1087 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.1087 of 2022

and

C.M.P.No.18660 of 2022

Tmt.Kavitha

... Petitioner

Vs.

Sathyamoorthy

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the HMOP No.185 of 2022 from the file of the Subordinate Court, Ottanchathiram and transfer the same to the file of the Subordinate Court, Udumalapet.

For Petitioner : Mr.A.R.M.Arunachalam

For Respondent : Mrs. Rita Chandra Sekar
For Ms. Aiyar & Dolia

ORDER

The petition for transfer is filed to withdraw the HMOP No.185 of 2022 from the file of the Subordinate Court, Ottanchathiram and transfer the same to the file of the Subordinate Court, Udumalapet.



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2. The marriage between the petitioner and the respondent was solemnised on 15.11.2022 as per the Hindu Rites and Customs. One female child was born from and out of the wedlock between the petitioner and the respondent and now aged about 18 years. Due to misunderstanding, the petitioner and the respondent are living separately for about 9 years. The learned counsel for the petitioner states that the respondent filed HMOP No.185 of 2022 for dissolution of marriage on the file of the Subordinate Court, Ottanchathiram. The petitioner is running a school and the daughter is pursuing NEET Examination after completing the XII Standard Course. Thus, the petitioner is not in a position to travel and contest the divorce case filed by the respondent in HMOP No.185 of 2022 before the Subordinate Court, Ottanchathiram. The learned counsel for the petitioner further contended that the respondent, as a father, is not contributing for the maintenance of their child, who is pursuing the NEET Examination.

3. The interim maintenance of a children is a right, which cannot be denied and such interim maintenance is to be granted even in the absence of any formal application by either of the parties. The maintenance of a child is



the duty of the parents and the petitioner filed I.A.No.18 of 2022 for grant of maintenance. Thus, the final maintenance to be paid deserves to be adjudicated between the parties and to determine. As far as, the interim maintenance is concerned, it is to be paid even in the absence of any application and this Court, in this regard requested the learned counsel for the respondent to get instructions, who in turn, on instructions, submits that the respondent is ready and willing to pay the sum of Rs.10,000/- towards interim maintenance.

4. The maintenance is the livelihood for a child and even in cases, the wife is employed, the father has to contribute his share of maintenance. The remedy of interim maintenance is a measure of social justice as envisaged under the Constitution to prevent the children from falling into destitution and vagrancy. The preamble in the Article 39 and 15(3) of the Constitution envisage social justice and and positive state action for the empowerment of women and children thus, the interim maintenance is to be granted whenever, a child is to be maintained by the parents. The Courts cannot keep such maintenance petitions have a prolonged period and in all such petitions soon after the filing of the same, interim maintenance is to be



granted considering the status, income, lifestyle and other mitigating factors.

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5. In the present case, the respondent has already given an undertaking through his counsel that he will pay a sum of Rs.10,000/- towards interim maintenance per month, which is to be deposited in the account of the daughter, since she is a major. Thus, Interim Maintenance is to be paid from December 2022 onwards.

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.”

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(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:-

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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.”

7. Considering the facts and circumstances, the HMOP No.185 of 2022 pending on the file of the Subordinate Court, Ottanchathiram stands transferred to the Subordinate Court, Udumalpet. The Subordinate Court, Ottanchathiram is directed to transmit the case papers to the Subordinate Court, Udumalpet within a period of four (4) weeks from the date of receipt



of a copy of this order.

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8. 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

skr/Jeni
Index : Yes
Speaking order

To

1.The Judge,
Subordinate Court,
Ottanchathiram.

2.The Judge,
Subordinate Court,
Udumalpet.



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S.M.SUBRAMANIAM, J.

skr

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