



WEB COPY

Tr.C.M.P.No.1082 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1082 of 2022

and

C.M.P.No.18581 of 2022

A.Nishadhini

.. Petitioner

vs

R.Siva Kumar @ Sam

.. Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw I.D.O.P.No.4281 of 2022 pending on the file of the 1st Additional Principal Judge Family Court at Chennai and transfer the same to Principal District Judge, Vellore.

For Petitioner : Mr.P.Kannan

For Respondent : Mr.S.Gajapathi Krishnan

ORDER

The transfer petition is filed to withdraw I.D.O.P.No.4281 of 2022 pending on the file of the learned I Additional Principal Judge Family Court at Chennai and transfer the same to learned Principal District Judge, Vellore.



WEB COPY

2. The marriage between the petitioner and the respondent was solemnized on 02.10.2020 as per the Christian Rites and Customs. A female child was born from and out of the wedlock between the petitioner and the respondent and now is one year old. Due to misunderstandings, the petitioner and the respondent are living separately.

3. The petitioner was working as a Nurse on contract basis in the Medical Department of the Government of Tamil Nadu and after the expiry of the period of contract, she was removed from the post and now is unemployed. The petitioner is residing along with her parents at Vellore and has to take care of her one year old female child.

4. Learned counsel for the petitioner states that the respondent filed I.D.O.P.No.4281 of 2022 for divorce on the file of the learned I Additional Principal Family Court, Chennai. Since the petitioner is now unemployed and dependent on her parents and has to maintain her one year old female child, she is not in a position to travel and contest the divorce case filed by the respondent pending before the learned I Additional Principal Family



Court, Chennai.

Tr.C.M.P.No.1082 of 2



WEB COPY

5. Learned counsel for the respondent raised an objection by stating that the respondent is facing threat from the family members of the petitioner. Mere statement in this regard would be insufficient to consider the claim of the respondent. However, the fact remains that the respondent / husband is not paying any maintenance for the one year old female child, now living with the petitioner / mother.

6. Even in the absence of any petition seeking maintenance, the Court has to consider the grounds of interim maintenance to protect the livelihood of the minor child, who are in the custody of the mother, who is unemployed. Even in case if the mother is employed, the father is liable to share the maintenance and thus, the Courts are expected to grant interim maintenance in such circumstances even in the absence of any application, seeking mandamus.

7. In the present case, the respondent was working in abroad and now working in Chennai. Therefore, he is bound to pay the interim maintenance



of Rs.5,000/- per month for the maintenance of the one year old female child and the petitioner / wife is at liberty to file appropriate application for determining the maintenance amount to be paid. The interim maintenance is not a bar for the petitioner / wife to claim further maintenance or otherwise by approaching the competent Court of law.

8. As far as the transfer petition is concerned, the place of the wife is preferable for the adjudication of matrimonial disputes.

9. The petitioner filed I.D.O.P.No.257 of 2022 for restitution of conjugal rights, which is now pending on the file of the learned Principal District Judge at Vellore. Thus, both the cases are to be tried together.

10. Considering the facts and circumstances, I.D.O.P.No.4281 of 2022 pending on the file of the learned I Additional Principal Family Court, Chennai stands transferred to the learned Principal District Court, Vellore to be tried along with I.D.O.P.No.257 of 2022.

11. Learned I Additional Principal Family Court, Chennai is directed



to transmit the case papers within a period of four weeks from the date of receipt of a copy of this order.

WEB COPY

12. The respondent / husband is directed to pay the interim maintenance of Rs.5,000/- to the petitioner / wife towards the maintenance of one year old female child. The said interim maintenance is directed to be paid on or before the 10th day of every calendar month from January, 2023 onwards.

13. Accordingly, the transfer petition is allowed. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.12.2022

drm

Index : Yes / No

Speaking order / Non-speaking order

To

1. The I Additional Principal Family Court, Chennai.
2. The Principal District Court, Vellore.



WEB COPY

Tr.C.M.P.No.1082 of 2



S.M.SUBRAMANIAM, J.

(drm)

Tr.C.M.P.No.1082 of 2022
and
C.M.P.No.18581 of 2022

21.12.2022