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Tr.C.M.P.No.1160 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1160 of 2022

and

C.M.P.No.19778 of 2022

M.Divya

... Petitioner/Respondent

Vs.

V.Premkumar

... Respondent/Petitioner

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the HMOP No.217 of 2022 pending on the file of the Sub-Court, Ponneri and transfer the same to the file of Sub-Court, Kancheepuram.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.R.Venkatesulu



ORDER

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The petition for transfer is filed to withdraw the HMOP No.217 of 2022 from the file of the Sub-Court, Ponneri and transfer the same to the Sub-Court, Kancheepuram.

2. The marriage between the petitioner and the respondent was solemnised on 25.02.2021 as per Hindu rites and customs. Due to some misunderstanding, the petitioner and the respondent are living separately.

3. The learned counsel for the petitioner states that the petitioner while staying at Porur filed HMOP 325 of 2022 on the file of the Principal Sub-Court Kancheepuram for restitution of conjugal rights. However, during the pendency of the said case, she had shifted her residence to Thiruvannamalai and now joined her parents, who are residing at Thiruvannamalai. However, the petitioner is ready and willing to continue the case at Kancheepuram along with the other case filed by the respondent on the file of the Sub-Court Ponneri for dissolution of marriage.



4. The respondent/husband filed HMOP No.217 of 2022 for divorce on the file of the Sub-Court Ponneri, Thiruvallur District. The learned counsel for the respondent made a submission that the respondent/husband filed a case on the file of the Sub-Court Ponneri and the petitioner/wife is working at Chennai and thus, transferring the case from Kancheepuram to Family Court at Chennai would not cause any prejudice to either of the parties and therefore both the cases have to be transferred to the Family Court at Chennai.

5. This Court is of the considered opinion that the petitioner/wife and the respondent/husband are not residing within the territorial jurisdiction of Chennai. The petitioner as of now is working by residing along with her parents at Thiruvannamalai. The respondent is now residing at Gummidipundi District. Thus, such a contention to transfer the case to Family Court, Chennai, deserves no merit consideration.

6. As far as the transfer of matrimonial cases are concerned, the place of the wife is preferable and the Courts have settled the principles regarding transfer petitions, more specifically in the matters of matrimonial cases, well



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, 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 5 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:-

“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



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jurisdiction of the Court where she resides.”

7. Considering the facts and circumstances, the HMOP No.217 of 2022 pending on the file of the Sub-Court, Ponneri stands transferred to the Sub-Court, Kancheepuram. The Sub-Court, Ponneri is directed to transmit the case papers to the Sub-Court, Kancheepuram within a period of one (1) week from the date of receipt of a copy of this order.

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.

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20.12.2022

Index : Yes

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Speaking order

To

1. Sub-Court, Ponneri.

2. Sub-Court, Kancheepuram.



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S.M.SUBRAMANIAM, J.

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