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Tr CMP.No. 1277 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr C.M.P. No. 1277 of 2022

Janaki ... Petitioner

Vs

Manickam ... Respondent

Prayer : Transfer Civil Miscellaneous Petition filed under Section 24 of the C.P.C. to withdraw FCOP .No. 528 of 2022 from the file of the Family Court, Erode and transfer the same to the file of Principal Family Court, Coimbatore.

For Petitioner : Mr. AR. M. Arunachalam
For Respondent : Mr. S. Kamadevan

ORDER

Mr. S. Kamadevan, learned counsel takes notice for the respondent. Thus the matter is taken up for final hearing.

2. The marriage between the petitioner and the respondent was solemnized on 04.06.2009 as per the Hindu Rites and Customs. One male child was born from and out of the wedlock and now living with the petitioner mother and aged about 13 years.



3. The respondent filed FCOP 528 of 2022 for dissolution of marriage on the file of the Family Court, Erode.

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4. The learned counsel for the petitioner states that the petitioner is unemployed and residing along with her parents at Coimbatore. She has to take care of the minor boy also. Thus, she is not in a position to spend travel and contest the divorce case filed by the respondent on the file of the Family Court, Erode.

5. That apart, the petitioner has already filed MC No. 249 of 2017 pending on the file of the Principal Family Judge, Coimbatore and DVC No.380 of 2019 pending on the file of the Mahila Court, Coimbatore. Thus, the present case also to be transferred.

6. Learned counsel for the respondent objected the said contention by stating that the petitioner is going on filing the litigation unnecessarily in order to harass the respondent. Since the parties are living separately for long years, the respondent filed a petition for dissolution of marriage at Erode. Thus, the transfer petition is to be rejected.



7. 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."

(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*



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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:-*

"18. It is true that section 19 of the Hindu





To

1. The Family Court,
Erode

2. The Principal Family Court,
Coimbatore.

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S.M.SUBRAMANIAM, J.

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