



TR.C.M.P(MD).No.129 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.10.2022

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**TR.C.M.P(MD).No.129 of 2022**  
**and**  
**C.M.P(MD).Nos.2479 and 2481 of 2022**

S.Aarthi

... Petitioner

versus

R.Magesh @ Manikandan

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C to withdraw the case in H.M.O.P.No.128 of 2022 from the file of the Sub Court, Alandur to the file of the Sub Court, Thanjavur.

For Petitioner : Mr.S.Venkatesan

For Respondent : Mr.R.Subramanian

**ORDER**

This Transfer Civil Miscellaneous Petition is filed seeking transfer of H.M.O.P.No.128 of 2022 from the file of the Sub Court,



TR.C.M.P(MD).No.129 of 2022

Alandur, to the file of the Sub Court, Thanjavur.

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2. The petitioner is the wife and the respondent is the husband. The marriage between them was solemnized on 08.09.2014, as per Hindu Rites and Customs and out of the wedlock, they are blessed with two children (twins). According to the petitioner, after the marriage, she was subjected to cruelty by the respondent and his family members and she was also driven out from the matrimonial house. Now, the respondent, in order to escape from paying maintenance to his wife and children, filed H.M.O.P.No.128 of 2022 before the Sub Court, Alandur, seeking restitution of conjugal rights. Since the petitioner and her children are living along with her old-aged parents at Thanjavur, she finds it difficult to travel from Thanjavur to Alandur. Hence, she filed the present Transfer Civil Miscellaneous Petition to transfer the case in H.M.O.P.No.128 of 2022 from the file of the Sub Court, Alandur to the file of the Sub Court, Thanjavur.



TR.C.M.P(MD).No.129 of 2022

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3. The learned counsel appearing for the petitioner submits that the distance between Thanjavur and Alandur is around 327 kms. He further submits that the petitioner is working at Thanjavur and doing Ph.D. in SASTRA Deemed University, Thanjavur and her children are also studying Grade I at Kamala Subramaniam CBSE Secondary School at Thajavur. Therefore, she finds it very difficult to attend the Court at Alandur for each and every hearing.

4. The learned counsel appearing for the respondent submits that the petitioner is working as Assistant Professor and she is also having sufficient means, whereas, the respondent/husband met with an accident and sustained injury in his spinal cord and therefore, it would be very difficult for him to appear before the Court at Thanjavur for each and every hearing.



TR.C.M.P(MD).No.129 of 2022

5. This Court considered the rival submissions made and also perused the materials available on record.

6. The marriage between the petitioner and the respondent was solemnized on 08.09.2014 at Pudukkottai and out of the wedlock, they are blessed with two children (twins). According to the petitioner, she was subjected to cruelty by the respondent and his family members and she was also driven out from the matrimonial home and now, the respondent, in order to escape from paying maintenance to his wife and children, filed H.M.O.P.No.128 of 2022 before the Sub Court, Alandur, seeking restitution of conjugal rights. Since she is working at Thanjavur and she is having two children, she finds it very difficult to attend the Court at Alandur. Therefore, she filed this Transfer Civil Miscellaneous Petition.

7. According to the learned counsel for the petitioner, there is no possibility for re-union. Noting that the petitioner is not willing for



TR.C.M.P(MD).No.129 of 2022

re-union, the respondent/husband, in order to harass the petitioner and to get some other relief from her, appears to have filed H.M.O.P.No. 128 of 2022.

8. But, the learned counsel for the respondent claims that the respondent met with an accident and he also sustained injury in his spinal cord. Therefore, it is very difficult for him to travel from Alandur to Thanjavur. Therefor, he prays for dismissal of this petition.

9. Though the respondent claims that he sustained injury in his spinal cord, he has not produced any medical record to substantiate the same. Further, the Hon'ble Apex Court in the case of ***Amitha Shah vs- Virendar Lal Shah***, reported ***(2003)10 SCC 609*** has held that *the convenience of the wife and more so of the child must be taken into account while deciding the petition for transfer* and in the case of Rajani ***Kishor Paradeshi Vs Kishor Babulal Paradeshi*** reported in ***(2005) 12 SCC 237***, the Hon'ble Apex Court has held that in such type



TR.C.M.P(MD).No.129 of 2022

of transfer petitions, the convenience of the wife is to be preferred over the convenience of the husband.

10. This Court being satisfied with the reasons stated in the affidavit filed in support of this petition and also taking into consideration that the convenience of wife is to be taken into consideration at the time of considering transfer petitions as held by the Hon'ble Supreme Court in the judgments cited supra, is inclined to allow this petition.

11. Though the relief is sought for in this petition to transfer H.M.O.P.No.128 of 2022 from the file of Sub Court, Alandur, to the file of Sub Court, Thanjavur and since the Family Courts are established only for the purpose of dealing with the matrimonial issues, this Court is inclined to transfer H.M.O.P.No.128 of 2022 from the file of the Sub Court, Alandur, to the file of the Family Court, Thanjavur.



TR.C.M.P(MD).No.129 of 2022

12. Accordingly, the Transfer Civil Miscellaneous petition stands allowed. The proceedings in H.M.O.P.No.128 of 2022 pending on the file of the Sub Court, Alandur, is withdrawn and ordered to be transferred to the file of the Family Court, Thanjavur. The Sub Court, Alandur, is directed to transmit the entire case records to the Family Court, Thanjavur, forthwith. The learned Judge, Family Court, Thanjavur, shall dispose of the case as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

**28.10.2022**

Index : Yes / No

Internet: Yes / No

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To

1. The Sub Court,  
Alandur.

2. The Family Court,  
Thanjavur.



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TR.C.M.P(MD).No.129 of 2022

**B.PUGALENDHI, J.**

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**TR.C.M.P(MD).No.129 of 2022**

**28.10.2022**