



TR.C.M.P(MD).No.348 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.C.M.P(MD).No.348 of 2022

and

C.M.P(MD).No.5899 of 2022

Sunitha Priyatharshini

... Petitioner

versus

M.Balamurugan

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 C.P.C. to withdraw the case in H.M.O.P.No.14 of 2022 pending on the file of the learned Subordinate Judge, Virudhunagar and transfer the same to the Sub Court, Alandur, to try along with H.M.O.P.No.1011 of 2021.

For Petitioner : Mr.M.Digvijayapandian

For Respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition is filed by the petitioner/wife seeking transfer of H.M.O.P.No.14 of 2022 from the



TR.C.M.P(MD).No.348 of 2022

file of the learned Subordinate Judge, Virudhunagar, to the file of the Sub Court, Alandur, to be tried along with H.M.O.P.No.1011 of 2021.

2. The learned counsel appearing for the petitioner submits that the petitioner herein is the wife and the respondent herein is the husband. Their marriage was solemnized on 13.04.2007 as per Hindu Rights and Customs and out of the wedlock, they are blessed with two children. Due to difference of opinion, now they are living separately. Thereafter, the petitioner/wife has filed a divorce petition before the Sub Court, Tambaram, in H.M.O.P.No.356 of 2020 in the month of December 2020, which was subsequently transferred to the Sub Court, Alandur and renumbered as H.M.O.P.No.1011 of 2021 and the same is pending. The respondent/husband has received notice in the divorce petition, appeared before the trial Court and also filed his reply statement. Thereafter only, he filed a petition in H.M.O.P.No.14 of 2022 before the Sub Court, Virudhunagar, for restitution of conjugal rights, with an intention to harass the petitioner.



TR.C.M.P(MD).No.348 of 2022

3. The learned counsel for the petitioner further submits that now, the petitioner and her children are living along with her aged parents at Chennai. Further, the petitioner is having two children, aged about 9 years and 4 years respectively and they are also studying at Chennai. Since the petitioner alone has to take care of her children and there is no one to support her and accompany her, she finds it difficult to travel from Chennai to Virudhunagar. Therefore, she filed the present petition seeking transfer of H.M.O.P.No.14 of 2022 from the file of the learned Subordinate Judge, Virudhunagar, to the file of the Sub Court, Alandur, to be tried along with H.M.O.P.No.1011 of 2021.

4. This Court, by order dated 13.07.2022, ordered notice to the respondent through Court as well as privately and also permitted the petitioner to serve notice on the learned counsel, who is appearing for the respondent before the trial Court. The petitioner has also filed proof affidavit stating that the registered post sent to the respondent's address, i.e. old No.27/2K-1, New No.141, Senthivinayagapuram, 4th



TR.C.M.P(MD).No.348 of 2022

Street, Aruppukottai Road, Virduhunagar, was returned with an endorsement as “unclaimed” and thereafter, when the respondent/husband appeared in person before the Sub Court, Alandur on 17.102.2022, the counsel, who appeared on behalf of the petitioner, served notice to the respondent, who appeared in person and obtained an acknowledgment card. The said acknowledgment is also produced before this Court. Therefore, the service of notice to the respondent is held sufficient. Further, the matter is listed today in the name of the respondent. However, there is no representation on behalf of the respondent.

5. 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.348 of 2022

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

6. This Court, by 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 the present petition.

7. Accordingly, the Transfer Civil Miscellaneous petition stands allowed. The proceedings in H.M.O.P.No.14 of 2022 pending on the file of the learned Subordinate Judge, Virudhunagar, is withdrawn and ordered to be transferred to the file of the Sub Court, Alandur to be tried along with H.M.O.P.No.1011 of 2021. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2022

Index : Yes / No

Internet: Yes / No

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TR.C.M.P(MD).No.348 of 2022

B.PUGALENDHI, J.

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To

1. The Sub Court,
Virudhunagar.
2. The Sub Court,
Alandur.

TR.C.M.P(MD).No.348 of 2022

04.11.2022