



TR.C.M.P(MD).No.362 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.C.M.P(MD).No.362 of 2022

and

C.M.P(MD).No.6069 of 2022

K.V.Devi Sree Umadevi

... Petitioner

versus

K.S.Manoj Kumar

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 C.P.C. to withdraw the case in H.M.O.P.No.67 of 2022 from the file of the learned Subordinate Judge, Palani, Dindigul District and transfer the same to the Family Court, Madurai to be tried along with H.M.O.P.No.558 of 2022.

For Petitioner : Mr.A.S.RAjeswari

For Respondent : No appearance



TR.C.M.P(MD).No.362 of 2022

ORDER

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This Transfer Civil Miscellaneous Petition is filed seeking transfer of H.M.O.P.No.67 of 2022 from the file of the learned Subordinate Judge, Palani, Dindigul District, to the file of the Family Court, Madurai, to be tried along with H.M.O.P.No.558 of 2022.

2. The petitioner herein is the wife and the respondent herein is the husband. The marriage between them was solemnized on 05.02.2020, as per Hindu Rites and Customs. Due to some misunderstanding, now, both are living separately. Thereafter, the respondent has filed H.M.O.P.No.67 of 2022 before the Sub Court, Palani, Dindigul District, for divorce. Subsequently, the petitioner has also filed H.M.O.P.No.558 of 2022 before the Family Court, Madurai, seeking restitution of conjugal rights. Now, the petitioner is living along with her aged parents at Madurai. Since she is not having sufficient means and there is no one to accompany her, she finds it difficult to travel from Madurai to Palani. Hence, she filed the present



TR.C.M.P(MD).No.362 of 2022

Transfer Civil Miscellaneous Petition to transfer the case in H.M.O.P.No.67 of 2022 from the file of the learned Subordinate Judge, Palani, Dindigul District, to the file of the Family Court, Madurai, to be tried along with H.M.O.P.No.558 of 2022.

3. The learned counsel appearing for the petitioner submits that the distance between Madurai and Palani is around 122 kms. Now, the petitioner is living along with her aged parents at Madurai. Further, she is not having sufficient means and she also depends upon her parents to meet out her day-to-day expenses. Since there is no one to accompany her, she finds it difficult to travel from Madurai to Palani, for appearing before the Sub Court, Palani, for each and every hearing.

4. Though notice was sent to the respondent, it was returned with an endorsement as “he left India”. Therefore, this Court permitted the petitioner to serve notice on the counsel, who is appearing before the Trial Court. The petitioner has also served notice on the counsel, even



TR.C.M.P(MD).No.362 of 2022

thereafter, there was no representation on behalf of the respondent.

Therefore, this Court directed to print the name of the respondent.

Today, the matter is listed in the name of respondent. However, there is no representation for 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 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



TR.C.M.P(MD).No.362 of 2022

judgments cited supra, is inclined to allow the present petition.

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7. Accordingly, the Transfer Civil Miscellaneous petition stands allowed. The proceedings in H.M.O.P.No.67 of 2022 pending on the file of the learned Subordinate Judge, Palani, Dindigul District, is withdrawn and ordered to be transferred to the file of the Family Court, Madurai, to be tried along with H.M.O.P.No.558 of 2022. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

Index : Yes / No
Internet: Yes / No
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To

1. The Sub Court,
Palani,
Dindigul District.
2. The Family Court,
Madurai.

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TR.C.M.P(MD).No.362 of 2022

B.PUGALENDHI, J.

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TR.C.M.P(MD).No.362 of 2022

29.11.2022