



TR.C.M.P(MD).No.501 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.501 of 2022

and

C.M.P(MD).No.7942 of 2022

Syed Ali Fathima

... Petitioner

versus

A.Javith Miean

... Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 C.P.C. to withdraw the case in O.S.No.292 of 2021 pending on the file of the District Munsif, Ambattur, Thiruvallur District and transfer the same to the Family Court, Madurai.

For Petitioner : Mr.M.Seenisulthan

For Respondent : No appearance



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ORDER

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This Transfer Civil Miscellaneous Petition has been filed seeking transfer of O.S.No.292 of 2021 from the file of the District Munsif, Ambattur, Thiruvallur District, to the file of the Family Court, Madurai.

2. The petitioner herein is the wife and the respondent herein is the husband. The marriage between them was solemnized on 23.06.2019, as per Muslim Rites and Customs and out of the wedlock, a male child was born to them in the year 2020. Due to some misunderstanding, now, they are living separately. Thereafter, the respondent has filed O.S.No.292 of 2021 before the District Munsif, Ambattur, Thiruvallur District, seeking the relief of restitution of conjugal rights. The petitioner has also filed M.C.No.40 of 2022 before the Family Court, Madurai, seeking maintenance. Now, the petitioner and her 2 ½-year-old child are living along with her aged parents at Madurai. Since she alone has to take care of her child and



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there is no one to accompany her, she finds it difficult to travel from Madurai to Ambattur. Hence, she filed the present Transfer Civil Miscellaneous Petition to transfer the case in O.S.No.292 of 2021 from the file of the District Munsif, Ambattur, Thiruvallur District, to the file of the Family Court, Madurai.

3. The learned counsel appearing for the petitioner submits that the distance between Madurai and Ambattur is around 460 kms. Now, the petitioner and her 2 ½-year-old child are living along with her aged parents at Madurai. Further, the petitioner is not having sufficient means to travel and she 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 Ambattur, for appearing before the District Munsif, Ambattur, for each and every hearing.

4. Though notice was served on the respondent and his name has been printed in the cause list, there is no representation on behalf of



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him either in person or through a counsel.

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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 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 O.S.No.292 of 2021 pending on the file of the District Munsif, Ambattur, Thiruvallur District, is withdrawn and ordered to be transferred to the file of the Family Court, Madurai. The District Munsif, Ambattur, Thiruvallur District, is directed to transmit the entire case records to the Family Court, Madurai, forthwith. The learned Judge, Family Court, Madurai, shall dispose of the case as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2022

Index : Yes / No

Internet: Yes / No

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To

1. The District Munsif,
Ambattur,
Thiruvallur District.

2. The Family Court,
Madurai.

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B.PUGALENDHI, J.

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