



TR.C.M.P(MD)No.557 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.C.M.P(MD)No.557 of 2022 and
C.M.P(MD)No.8850 of 2022

T.Jebarlin Jeniha

... Petitioner

Vs

I.Idhaya Kamalesh

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C, to withdraw the original petition in IDOP.No.833 of 2022 on the file of the Family Court, Madurai and transfer the same to the file of the Family Court, Kanyakumari @ Nagercoil.

For Petitioner : Mr.C.Kishore

For Respondent : Mr.Idhaya Kamalesh

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of the case in IDOP.No.833 of 2022 from Family Court, Madurai to Family Court, Kanyakumari.



TR.C.M.P(MD)No.557 of 2022

2.The learned Counsel for the petitioner submits that the marriage between the petitioner and the respondent was solemnized on 25.05.2018 in Kanyakumari District and out of wedlock they are having one female child. The petitioner was physically assaulted and verbally abused by the respondent for various demands and therefore now she is residing in her parents' house at Nagercoil. The respondent is not paying any maintenance to the petitioner and she is depending on her age old parents and therefore, she filed an application under Section 12 of the Protection of Women from Domestic Violence Act before the learned Judicial Magistrate No.1, Padmanabapuram. The respondent has filed the above IDOP.No.833 of 2022 before the Family Court, Madurai seeking restitution of conjugal rights under Section 32 of the Indian Divorce Act. Since the petitioner is residing in Kanyakumari district, she has filed the present Transfer Civil Miscellaneous Petition to transfer the above proceedings to Family Court, Kanyarkumari @ Nagercoil and the distance between Kanyakumari and Madurai is 260 kms.



TR.C.M.P(MD)No.557 of 2022

3.This Court ordered notice on 26.09.2022.

Advocate Mr.Manivel Pandian and two others entered appearance on 26.09.2022. On 04.11.2022 there was no representation for the respondent. When the court was about to pass orders, one Mr.Madurai Veeran, learned Counsel represented that he has filed vakalath for the respondent and requested for short accommodation. Recording the submission of the learned Counsel, Mr.Madurai Veeran, this Court adjourned the case to 18.11.2022. When this petition was taken up for hearing learned Counsel represented that they have returned the papers to the respondent and they are not having any instruction to proceed with the case. Therefore, this Court directed the Registry to list the case in the name of the respondent and directed the learned Counsel to inform the respondent about the listing of the case.

4.Today when the case was taken up for hearing, the respondent appeared before this court as party - in person and Advocate Mr.Balasubramani, was prompting behind the respondent. When this court has



TR.C.M.P(MD)No.557 of 2022

ascertained Mr.Balasubramani, whether he is inclined to appear for the respondent, it was replied that he was not inclined to appear. Accordingly the respondent has presented his case.

5.The respondent submits that the petitioner has filed this transfer civil miscellaneous petition only to harass him and he also filed a petition in GWOP No.1068 of 2022 before the Family Court, Madurai for the custody of the child.

6.This Court considered the rival submissions and perused the materials placed on record.

7.The petitioner wife claims that she was physically assaulted and verbally abused by the respondent and therefore, she has left the matrimonial home and now she is living with her parents at Kanyakumari district and the petitioner seeks IDOP.No.833 of 2022 filed before the Family Court, Madurai by the husband seeking restitution of conjugal



TR.C.M.P(MD)No.557 of 2022

rights, to be transferred to Family Court, Kanyakumari.

WEB COPY

8.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.

9.This Court considering that 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 the present petition.



TR.C.M.P(MD)No.557 of 2022

10.In the light of the above, this transfer civil miscellaneous petition stands allowed with the following directions:

(i)The case in IDOP.No.833 of 2022 on the file of the Family Court, Madurai is transferred to the Family Court, Kanyakumari;

(ii)The learned Judge, Family Court, Madurai is directed to send the above case records within a period of fifteen days from the date of receipt of a copy of this order to the learned Judge, Family Court, Kanyakumari, who in turn, on receipt of the case, shall dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition stands closed.

25.11.2022

Index: Yes/No

To



TR.C.M.P(MD)No.557 of 2022

WEB COPY

1.The Judge,
Family Court,
Madurai.

2.The Judge,
Family Court,
Kanyakumari.



WEB COPY



TR.C.M.P(MD)No.557 of 2022

B. PUGALENDHI , J.

dsk

TR.C.M.P (MD) No.557 of 2022

25.11.2022