



Tr.C.M.P(MD)No.574 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Tr.C.M.P(MD)No.574 of 2022

and

C.M.P(MD) No.9191 of 2022

S.Siva Sankari

... Petitioner

-Vs-

G.Balathirupathi @ Vinothkumar

... Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw and transfer the case in H.M.O.P.No.1282 of 2021 pending on the file of the learned District Judge, Family Court, Madurai to the file of the Family Court, Theni.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.M.Mohamed Sherbudeen

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of the proceedings in H.M.O.P.No.1282 of 2021 from the file of the Family Court, Madurai to the Family Court, Theni.



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2.The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 26.02.2020. Out of the wedlock, they have blessed with a female child on 12.12.2020. Subsequently, due to some difference of opinion, they separated. The respondent filed H.M.O.P.No.1282 of 2021, for the relief of restitution of conjugal rights. Since the petitioner/wife is a resident of Theni, she filed this present Transfer Civil Miscellaneous Petition to transfer the proceedings in H.M.O.P.No.1282 of 2021 from the file of the Family Court, Madurai to the Family Court, Theni.

3.The learned counsel appearing for the petitioner submits that the petitioner is having one year old child and it is very difficult for her to travel from Theni to Madurai to attend the proceedings and also there is no one to accompany her.

4.The learned counsel appearing for the respondent strongly objects for transfer of the proceedings in H.M.O.P.No.1282



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of 2021 from the file of the Family Court, Madurai to the Family Court, Theni.

5.The Hon'ble Apex Court in the case of ***Amitha Shah vs- Virendar Lal Shah***, reported in ***(2003)10 SCC 609***, has held that the convenience of the wife and more particularly the child must be taken into account while deciding the petition for transfer. Further, 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.Though the learned counsel appearing for the respondent raised certain objections for transfer of the proceedings, 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



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

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7.In the light of the above, this transfer civil miscellaneous petition stands allowed. The proceedings in H.M.O.P.No.1282 of 2021, on the file of the Family Court, Madurai is withdrawn and ordered to be transferred to the file of the Family Court, Theni. The learned Judge, Family Court, Madurai is directed to transmit the entire case records to the Family Court, Theni forthwith and the learned Judge, Family Court, Theni, who in turn shall dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

16.12.2022

Index : Yes/No

Internet : Yes/No

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To

1.The Family Court, Madurai

2.The Family Court, Theni.

3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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B.PUGALENDHI, J.

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