



CRP(PD)(MD)No.780 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Tr.C.M.P(MD)No.780 of 2022

N.Sankillikaruppu

... Petitioner

versus

C.Muthurathinam

... Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the petition in H.M.O.P.No.47 of 2022 pending before the Sub-Judge, Thirumangalam and to transfer the same to the Family Court, Madurai to try along with the petition in H.M.O.P.No.791 of 2021 pending before the Family Court, Madurai and dispose of the same in accordance with law.

For Petitioner : Mr. A.Ramkumar



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ORDER

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This Transfer Civil Miscellaneous Petition has been filed to withdraw the petition in H.M.O.P.No.47 of 2022 pending before the Sub Court, Thirumangalam and to transfer the same to the Family Court, Madurai, to try along with the petition in H.M.O.P.No.791 of 2021 pending before the Family Court, Madurai.

2. The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent solemnized on 12.03.2014, as per the Hindu Rites and Customs. Subsequently, due to some difference of opinion, the petitioner filed H.M.O.P.No.791 of 2021, seeking divorce, before the Family Court, Madurai and notice was also received by the respondent herein. Thereafter, the respondent herein has filed a petition in H.M.O.P.No.47 of 2022 for restitution of conjugal rights before the Sub-Court, Thirumangalam and the same is still pending.



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3. The learned counsel for the petitioner submitted that the petitioner is a resident of Madurai and the respondent is working in police department, residing at 6th Battalion Colony, Madurai. Therefore, it is difficult for them to appear before the Sub-Court, Thirumangalam. Therefore, this Court may transfer the H.M.O.P.No.47 of 2022 to the Family Court, Madurai, to try along with the petition in H.M.O.P.No.791 of 2021 pending before the Family Court, Madurai.

4. Heard the learned counsel for the petitioner and also perused the materials available on record.

5. Even after receiving notice in H.M.O.P.No.791 of 2021, the respondent/wife has not come forward to join with the petitioner. However, the respondent/wife filed a separate petition in H.M.O.P.No.47 of 2022 for restitution of conjugal rights before the Sub-Court, Thirumangalam.



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6. 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 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.

7. This transfer petition has been filed by the husband. The respondent / wife is taking care of her two female children. The convenience of wife is to be taken into consideration at the time of considering the transfer petitions as held by the Hon'ble Supreme Court in the judgments cited supra. In view of the same, this Court is not inclined to allow the present petition.



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8. Accordingly, this transfer Civil Miscellaneous Petition is dismissed with liberty to the petitioner/husband to withdraw the H.M.O.P.No.791 of 2021 pending before the Family Court, Madurai and to contest the case in H.M.O.P.No.47 of 2022 pending on the file of the Sub-Judge, Thirumangalam. The learned Sub-Judge, Thirumangalam, is directed to dispose of the same within a period of six months from the date of receipt of copy of this order. No Costs.

20.12.2022

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Index : Yes / No.

Internet : Yes / No.

To

1.Sub-Judge, Thirumangalam.

2. Family Court, Madurai.



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B.PUGALENDHI, J.

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