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TR.CMP No.57 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.03.2023

CORAM

HON'BLE JUSTICE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

TR.CMP No.57 of 2023

and

CMP No.1505 of 2023

N.Hepzhiba

...Petitioner/Respondent

Vs

P.Tennyson

...Respondent/Petitioner

Prayer: The Transfer Civil Miscellaneous Petition is filed under Section 24 read with 151 of C.P.C. to withdraw the divorce petition filed in I.D.O.P No.116 of 2020 from the file of Hon'ble Principal District Court, Vellore and transferred the same to the Hon'ble Family Court, Tiruchirappalli.

For Petitioner : Mr.R.Bhagawat Krishna

For Respondent : Mr.P.Kannan



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ORDER

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This petition is filed by the Petitioner/N.Hepzhiba seeking to withdraw the divorce petition filed in I.D.O.P No.116 of 2020 pending on the file of the Principal District Court, Vellore and transferred the same to the Family Court, Tiruchirappalli.

2.It is the contention of the learned Counsel for the Petitioner that earlier Transfer Civil Miscellaneous Petition filed by the Wife in TR.CMP.No. 379 of 2021 was closed on 14.07.2021 by this Court by observing as follows:-

"Accordingly, this transfer civil miscellaneous petition is closed on condition that the Respondent shall pay a sum of Rs.5,000/- for every hearing to the Wife either by cash or by way of a demand draft. The payment shall be made within three days of every hearing whenever the Petitioner remains present before the District Court, Vellore. If in case, the Respondent fails to appear consecutively for two hearings before the District Court, Vellore, the Petitioner will have an option to seek modification of this order. The Wife is entitled to get the amount towards travelling as indicated above only on the occasions where she actually attends the Court. No costs. Consequently, connected miscellaneous petition is closed."



3. Aggrieved by the same, the Wife/ the Petitioner in TR.CMP.No.379 of 2021 had preferred SLP (C).No.12699 of 2022 before the Hon'ble Supreme Court which was dismissed by observing as follows:-

"we are not inclined to interfere with the impugned judgment and hence, the petition for special leave to appeal is dismissed."

Now the I.D.O.P.No.116 of 2020 is at the stage of part-heard before the learned Principal District Judge, Vellore. At this stage, the Wife who was the Petitioner in the earlier TR.CMP.No.379 of 2021 had approached this Court by filing this Transfer Civil Miscellaneous Petition seeking to withdraw the I.D.O.P No.116 of 2020 from the file of the learned Principal District Judge, Vellore and transfer to the file of the learned Judge, Family Court at Tiruchirappalli.

4.It is the contention of the learned Counsel for the Petitioner/Wife that she had been paid Rs.5,000/- for every hearing in-obedience of the order passed by this Court in the earlier TR.CMP.No.379 of 2021. It is the further contention of the learned Counsel for the Petitioner that the wife is suffering from lower back pain. Therefore, she was under treatment for the same and Doctor had advised her not to travel. In the light of her health condition, on Doctors advise, she seeks



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withdrawal of the case in I.D.O.P.No.116 of 2020 from the Court of the learned Principal District Judge, Vellore to the Court of the learned Judge, Family Court at Tiruchirappalli.

5.The learned Counsel for the Respondent/Husband is also present in Court. He resisted the prayer of the Petitioner/Wife stating that the Respondent/Husband has complied with the order of this Court by providing her Rs.5,000/- for each hearing till this date.

6.Considering the special circumstances stated by the learned Counsel for the Petitioner and also the medical report annexed in the typed set that there is no dispute regarding her claim of back pain. At the same time, after the Covid lockdown throughout the state of Tamil Nadu, we had been conducting the Court proceedings through virtual mode. Therefore all the Courts in Tamil Nadu are furnished with Video conference facility. Therefore, instead of personal appearance before the learned Principal District Judge, Vellore, the Petitioner/Wife shall subject herself to let-in evidence by filing affidavit through the Counsel for chief examination and the same is to be recorded through virtual mode by the learned



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Trial Judge and she shall subject herself to cross-examination through virtual mode for which, facilities are available in the Court concerned.

7.In the light of the above, instead of allowing this Transfer Civil Miscellaneous Petition, in the light of the earlier order passed in TR.CMP.No.379 of 2021, which was confirmed by the Hon'ble Supreme Court, this Court instructs the learned Principal Judge, Vellore to consider the recording of the evidence of the Petitioner in this Transfer Civil Miscellaneous Petition/Wife, and the Respondent in I.D.O.P to be examined through virtual mode. The learned Principal Judge shall adopt the procedure mentioned in the High Court circular issued during Covid period, through cross-examination of the witness or litigant, as the case may be. The Respondent/Wife shall participate in the proceedings and to dispose of the I.D.O.P.No.116 of 2020. In the above circumstances, the Court of the learned Principal District Judge, Vellore shall not pass any orders against the Wife for her physical absence, for her inability to travel all the way from Tiruchirappalli to Vellore.



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8.The Respondent herein/ Petitioner in I.D.O.P.No.116 of 2020 has to bear any expenses that may be required by the Court to facilitate the conduct of Court proceedings through the virtual mode. Apart from this, the learned Principal District Judge can modify the proceedings accordingly facilitating the participation of the Petitioner herein/ Respondent in I.D.O.P from Tiruchirappalli.

Accordingly this Transfer Civil Miscellaneous Petition is disposed of with the above modification. Consequently connected CMP is closed.

02.03.2023

Index : Yes/No
Speaking order/ Non speaking order
dsn

To
1.The Principal District Court, Vellore
2.The Family Court, Tiruchirappalli



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SATHI KUMAR SUKUMARA KURUP, J.

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