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Tr.CMP No.126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM :

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

TR.CMP No.126 of 2023

and

C.M.P.No.2628 of 2023

R.Jaganath

.... Petitioner

-Vs-

Mrs.S.K.Shalini

.... Respondent

Prayer : Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw HMOP.No.07 of 2019 on the file of the Hon'ble Subordinate Court, Udthagamandalam and transfer the case to the file of Family Court, Coimbatore.

For Petitioner : Mr.R.Jaganath
Party-in-person

For Respondent : Mr.K.Arunagiri



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ORDER

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The petitioner/husband seeks transfer of HMOP.No.07 of 2019 on the file of the Subordinate Court, Udthagamandalam to the file of Family Court, Coimbatore.

2. The petitioner herein is the husband, who filed HMOP.No.90 of 2018 originally on the file of the Family Court, Coimbatore and the case was transferred to the file of Subordinate Court, Udthagamandalam based on the transfer CMP filed by the respondent in Tr.CMP No.191 of 2018. The petitioner/husband also engaged one Mr.Sivakumar, Advocate to contest the matter. At the time of filing of divorce petition, the petitioner engaged the counsel Mr.Chandran and Mrs.A.P.Divya for contesting the case. They also assured that they will take care of the case at Udthagamandalam. After transfer of the application, the respondent/wife filed an application in I.A.No.12 of 2019 before the Subordinate Court, Udthagamandalam seeking interim maintenance for herself and her minor daughter. In that application, objection was filed by the husband. On hearing both sides, the learned trial Judge directed the petitioner/husband to pay a sum of Rs.10,000/- per month



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as maintenance to the petitioner and her minor daughter from the date of filing of the petition and a sum of Rs.15,000/- towards litigation expenses.

3. Now, the revision petitioner/husband contended that he has not given instructions to his earlier counsel Mr.Chandran and Mrs.A.P.Divya to contest the interim maintenance application and without his consent, they themselves forged his signature in the counter affidavit filed in I.A.No.12 of 2019. Based on that, the learned trial Judge has passed the order of maintenance.

4. The revision petitioner filed the present revision seeking to transfer HMOP.No.07 of 2019 from the Subordinate Court, Udthagamandalam to the Family Court, Coimbatore stating that the respondent/wife is also residing at Coimbatore. The petitioner further submits that with regard to the forged signature made by his erstwhile counsel, he gave a complaint before the Bar Counsel of Tamil Nadu and Puducherry.

5. By way of reply, the learned counsel for the respondent submits that since the petitioner has not paid the interim maintenance as per the order passed in I.A.No.12 of 2019, the learned Trial Judge ordered to struck of HMOP proceedings in I.A.No.6 of 2021 and the same was allowed. Hence, the petition in HMOP.No.7 of 2019 on the file of the Subordinate Court,



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Udhagamandalam was dismissed due to non payment of interim maintenance. Therefore, the transfer of HMOP.No.07 of 2019 to the file of Family Court, Coimbatore does not arise.

6. Originally, the divorce petition in HMOP.No.90 of 2018 was filed before the Family Court, Coimbatore and the same was transferred to the file of Subordinate Court, Udhagamandalam as per the petition filed by the respondent in Tr.CMP No.191 of 2018.

7. It is the contention of the petitioner that he has not engaged Mr.Chandran and Mrs.A.P.Divya to contest the case and they themselves forged the petitioner's signature in the counter affidavit filed in I.A.No.12 of 2019 and based on that, interim maintenance was awarded. It is his further contention that he is having valid defence to prove that the respondent/wife is having sufficient source of income to maintain herself. Furthermore, he gave a complaint before the Bar Council of Tamil Nadu and Puducherry against those counsel.

8. Considering the submissions made by the petitioner, the order passed by the learned Trial Judge in dismissing HMOP.No.07 of 2019 is set aside. HMOP.No.07 of 2019 is withdrawn from the file of the Subordinate Court, Udhagamandalam and transferred to the file of Family Court,



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Coimbatore and the same shall be disposed of in accordance with law. The learned Subordinate Judge, Udthagamandalam is directed to send entire records to the learned Family Court Judge, Coimbatore within a period of two(2) weeks from the date of receipt of a copy of this order. Further, the order passed in I.A.No.12 of 2019 is set aside and the revision petitioner is given opportunity to file his objections in I.A.No.12 of 2019. The learned Family Court Judge, Coimbatore is directed to dispose of I.A.No.12 of 2019 within a period of eight(8) weeks from the date of receipt of a copy of this order, after giving due opportunity to the revision petitioner.

9. Accordingly, this Tr.C.M.P.No.126 of 2023 is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order: Yes/No
kmi

To

1.The Subordinate Court,
Udhagamandalam.

2.The Family Court,
Coimbatore.



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T.V.THAMILSELVI, J.
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