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Tr.C.M.P.No.384 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.384 of 2022

and

C.M.P.No.7421 of 2022

P.Vinoth

... Petitioner

Vs.

C.Alaghu Gayathri

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to pass an order of withdrawal of the H.M.O.P.No.32 of 2021 on the file of the Sub Court, Ponneri, Thiruvallur District and to transfer the same to the file of the II Additional Family Court, Chennai and to try the same along with the G.W.O.P.No.2028 of 2021.

For Petitioner : Mr.Madhu Prakash
For M/s.C.Lingam

For Respondent : Mr.V.Prabhakaran



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ORDER

The petition for transfer is filed to withdraw the H.M.O.P.No.32 of 2021 on the file of the Sub Court, Ponneri, Thiruvallur District and transfer to the II Additional Family Court, Chennai to be tried along with the G.W.O.P.No.2028 of 2021.

2. The marriage between the petitioner and the respondent was solemnized on 17.02.2014 as per Hindu Rites and Customs. Two children were born from and out of the wedlock between the petitioner and the respondent and now they are aged about seven (7) and five (5) years and school going. The petitioner and the respondent are living separately on account of matrimonial dispute and the respondent filed a Maintenance case and the petitioner filed G.W.O.P.No.2028 of 2021, pending on the file of the II Additional Family Court, Chennai, seeking custody of minors. That apart, the petitioner / husband filed H.M.O.P.No.32 of 2021 for Dissolution of Marriage, which is pending on the file of the Sub Court, Ponneri, Thiruvallur District.



3. The learned counsel for the petitioner states that the Maintenance Case and G.W.O.P.No.2028 of 2021 are pending before the II Additional Family Court, Chennai and therefore, the Divorce case in H.M.O.P.No.32 of 2021 is also to be transferred to the Family Court at Chennai for trial.

4. During the course of arguments, the learned counsel for the respondent states that the petitioner is not even meeting out the educational and other expenses of the minor children and the respondent is unemployed and depending on her parents even to meet out the educational expenses and other living expenditures of the minor children.

5. This Court is of the considered opinion that the livelihood of the minor children is to be protected and in such circumstances, the Courts are bound to grant interim maintenance to protect the life under Article 21 of the Constitution of India. Even in the absence of any application in this regard, Constitutional Courts are bound to ensure that the interest of the minor children are protected and in many such cases, the wife during the matrimonial dispute between the husband are unemployed and depending on the aged parents. Such circumstances shall not be allowed to be continued and the Courts are bound to protect the interest of the minor



children by granting interim maintenance and allowing the parties to determine the final maintenance to be paid by way of adjudication.

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6. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases, are well settled through the three decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in ***W.A.No.1181 of 2009, dated 09.07.2010***, wherein in paragraphs-21 and 22, it has been observed as under:-

“21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the



objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.”

(ii) In yet another case in ***Tr.CMP.Nos.138 and 139 of 2006, dated 30.08.2006***, the High Court of Madras has considered the following judgments of Hon'ble Supreme Court of India:-

*“(1) In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when the wife pleaded that she was unable to bear the*



traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

*(3) In the case of **Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355]**, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.*

*(4) In a decision in **Archana Singh vs. Surendra Bahadur Singh [(2005) 12 SCC 395]**, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband at Baikunthpur to be transferred to Allahabad, where the petitioner's*



wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.”

(iii) In a decision made in ***TR.CMP(MD)No.108 of 2010, dated 03.03.2011***, the Madurai Bench of Madras High Court, wherein in paragraph-18, it has been observed as below:-

“18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the Legislator is to safe-guard the interest and rights of the women, who are being subjected to



harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.”

7. The learned counsel for the respondent made a submission that the belongings of the respondent / wife is with the petitioner and even the educational certificates are not returned back to the respondent. The learned counsel for the petitioner states that some xerox copies of the documents alone are available and the Aadhar card in original is available and all those copies and other available belongings available will be returned back to the respondent / wife within a period of one week from today.

8. If at all the original educational certificates of the respondent is not available with the petitioner / husband, then the petitioner shall take all necessary steps to obtain duplicate copies from the Competent Authority / University concerned, enabling the respondent to secure those documents for the purpose of seeking employment. In this regard, the respondent shall furnish the list of educational certificates, which all are not returned / not



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available with the petitioner.

9. The petitioner / husband is ready and willing to pay a sum of Rs.15,000/- towards interim maintenance to maintain two (2) minor children.

10. The learned counsel for the petitioner made a submission that visitation rights may be provided and in this regard, the respondent also agreed to provide visitation right twice a month and the petitioner is permitted to meet the minor children on every 2nd and 4th sunday of English calendar month in between 04.00 p.m to 06.00 p.m and the meeting place would be Madhavaram Botanical Garden. The respondent may allow the petitioner to meet the children and to spend two hours with them. The petitioner shall not create any unnecessary dispute while exercising visitation rights.

11. Since the other cases are pending before the II Additional Family Court, the Divorce case should also be transferred. Accordingly, the



H.M.O.P.No.32 of 2021 pending on the file of the Sub Court, Ponneri, Thiruvallur District stands transferred to the II Additional Family Court at Chennai to be tried along with G.W.O.P.No.2028 of 2021 and the Maintenance Case filed by the respondent / wife.

12. It is made clear that the interim maintenance of Rs.15,000/- is directed to be paid by the respondent on or before 10th date of every English calendar month to the petitioner either through RTGS or bank transfer.

13. With these directions, the Transfer Petition in Tr.C.M.P.No.384 of 2022 stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.01.2023

skr/jeni

Index : Yes

Speaking order

Neutral Citation: Yes

To

1.The Judge,
Sub Court,
Ponneri,
Thiruvallur District.

2.The Judge,



II Additional Family Court,
Chennai.

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S.M.SUBRAMANIAM, J.

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