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Tr.C.M.P.No.616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

TR C.M.P. No.616 of 2023

and

CMP.No.15431 of 2023

S. Chella

.. Petitioner

Versus

K.Viswanathan

.. Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, 1908 to withdraw I.A. No. 1 of 2022 in F.C.O.P. No. 82 of 2018 from the file of the Family Court, Salem and transfer the same to the file of Sub Court, Harur.

For Petitioner : Mr. J. Pradeep

ORDER

This Transfer Civil Miscellaneous Petition is filed by the petitioner/wife praying to withdraw I.A. No. 1 of 2022 in FCOP No. 82 of 2018 on the file of the Family Court, Salem and transfer it to Sub Court, Harur, on the ground of convenience.



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2. It is seen from the record that the marriage between the petitioner and the respondent was solemnised on 11.04.2008 at Salem as per Hindu rites and customs. Due to the wedlock, two male children have born to them and they are V. Gurunathan and V. Guhanathan. According to the petitioner, after marriage, she was subjected to matrimonial cruelty by the respondent and his family members in various forms and manifestation. Even though she tolerated those harassments for the welfare of two male children, at one stage, unable to withstand the physical and verbal abuse, she left the matrimonial company of the respondent and staying in her parents house at Harur Taluk in Dharmapuri District. While so, she received notice in FCOP. No. 82 of 2018, filed by the respondent herein for dissolution of the marriage solemnised on 11.04.2008.

3. It appears that FCOP No.82 of 2018 was dismissed for default on 03.03.2022. Subsequently, the respondent has filed I.A. No. 1 of 2022 for restoration with a petition to condone the delay of 95 days. It is also seen that I.A. No. 1 of 2022 in FCOP No.82 of 2018 was taken on file and notice was issued to the petitioner herein, returnable by 31.01.2023.

4. Thus it is seen that the FCOP No.82 of 2018 filed by the respondent has been dismissed for default even as early as 03.03.2022 and the application



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I.A. No. 1 of 2022 filed by the respondent herein, for restoration of FCOP No. 82 of 2018 is pending. Thus, when FCOP No.82 of 2018 is no longer pending on the file of the Family Court, Salem, the question of transferring I.A. No. 1 of 2022 in FCOP. No. 82 of 2018 does not merit consideration.

5. The present transfer Civil Miscellaneous Petition is filed by the petitioner mainly on the ground that she is residing along with her parents at Harur Taluk, Dharmapuri District, which is roughly 150 kilometers from Salem and therefore, it will be difficult for her to attend the proceedings in FCOP No. 82 of 2018. It is for this reason the petitioner has filed this Transfer Civil Miscellaneous Petition seeking transfer of FCOP No. 82 of 2018 from the file of Family Court, Salem to the file of Sub Court, Harur.

6. The fact remains that the application filed by the respondent in I.A. No. 1 of 2022 for condonation of delay has to be dealt with on its own merits. The reasons stated in the affidavit filed along with the Petition in I.A. No. 1 of 2022 requires examination by the Family Court at Salem. The said application has to be adjudicated on its own merits in which the appearance of the petitioner herein is not necessary at this stage. Therefore, the question of transferring I.A. No. 1 of 2022 in FCOP No.82 of 2018 will not arise at this



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stage. The petitioner has not made out any case for interference of this Court .

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V.BHAVANI SUBBAROYAN, J.

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However liberty is given to the petitioner to work out her remedy in the manner known to law.

7. In the result, this Transfer Civil Miscellaneous Petition No.616 of 2023 stands dismissed as having no merits. No costs. Consequently, connected CMP.No.15431 of 2023 is closed.

21.07.2023

Index:Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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To

1.The Family Court, Salem

2. The Sub Court, Harur.

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