



TR. CMP. No. 783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

TR. CMP. No. 783 of 2023
& CMP No. 18950 of 2023

Saravanaraj G

...Petitioner

Vs.

Aishhwarya Devi M

....Respondent

PRAYER : This Transfer Civil Miscellaneous Petition is filed under Section 24 of CPC, to withdraw and transfer of HMOP No. 9 of 2022 from the file of learned Subordinate Court, Kumbakonam, Thanjavur District, to the file of Subordinate Court, Tambaram, Kanchipuram District.

For Petitioner : Mr.G.Saravanaraj - Party in person

For Respondent : Mr.R.Sathyanarayanan

ORDER

This petition has been filed to withdraw and transfer of HMOP No. 9 of 2022 from the file of learned Subordinate Court, Kumbakonam, Thanjavur District, to the file of Subordinate Court, Tambaram,



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Kanchipuram District.

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2. Both parties along with their counsel appeared before this Court and heard the submissions made by the learned counsels for the petitioner and the respondent.

3. Admittedly, both the petitioner and the respondent filed mutual divorce petition in HMOP No. 678 of 2019, during the cooling off period due to the absence of the petitioner the Court below dismissed the said petition for default. Thereafter, the petitioner filed restoration petition, due to lockdown, the petitioner not able to follow the petition. In the meantime, the respondent filed HMOP No. 9 of 2022 before the Subordinate Court, Kumbakonam. Now, the petitioner filed this petition to transfer HMOP No. 9 of 2022 from the file of learned Subordinate Court, Kumbakonam, Thanjavur District, to the file of Subordinate Court, Tambaram, Kanchipuram District.

4. The petitioner submits that initially he engaged the counsel, subsequently, he himself appeared in person in all the cases filed by the wife. According to him, he has spent more than 59 months by attending the Court hearing due to that he lost his job, thereafter he met with a accident , hence stated that there is no possibility for reunion and their relationship was



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already irretrievable break down.

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5. Both the petitioner and the respondent appeared before this Court and stated that there is no possibility for reunion and they want mutual divorce. On seeing the fact, both parties already filed HMOP No. 678 of 2019 for mutual divorce and they are not ready to live together. Considering the above, as well as the ratio laid down by the Hon'ble Supreme Court in the case of Shilpa Sailesh vs. Varun Sreenivasan reported in [(2023 SCC online SC 544)] is extracted hereunder:-

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

(i) The scope and ambit of power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India.

This question as to the power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

.....

(iii) Whether this Court can grant divorce in exercise of power under [Article 142\(1\)](#) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?



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This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under [Article 142\(1\)](#) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.

6. Taking note of the submissions made on the either side as well considering the ratio laid down in the above referred case, and in the interest of the parties, this Court by invoking under article 226 of Constitution of India, granting divorce to the parties by dissolving their marriage. Further, the parties are directed to produce the copy of this order to the Court for closure of the case.

7. In the result, this petition is disposed of. No Cost. Consequentially, connected miscellaneous petition is closed.

08.11.2023

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T.V.THAMILSELVI,J.



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To

1. The Subordinate Court, Kumbakonam, Thanjavur District.

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