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Tr.C.M.P.No.1006 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1006 of 2022

and

C.M.P.No.17233 of 2022

S.Magesh

... Petitioner

Vs.

1.Deepika

2.Suguna

... Respondents

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw and transfer the petition in F.C.M.C.No.9 of 2022 from the file of the Learned District Family Judge, Chengelpattu to the file of Principal District Family Court Judge, Chennai or any competent Court to try the same.

For Petitioner : No Appearance

For Respondents : Mr.S.Yudhish Padman



ORDER

The Transfer Petition was listed for final hearing on 08.12.2022, none appeared for the petitioner and thus, the case was listed under the caption “For Dismissal” on 12.12.2022. Again, when the matter was called on 20.12.2022, there was also no representation on behalf of the petitioner. In order to give one more opportunity, this Court passed an order, directing the Registry to list this matter once again under the caption “For Dismissal” on 22.12.2022. Even Today also i.e. on 10.01.2023, when the matter is taken up for hearing, there is no representation on behalf of the petitioner. Thus, this Court is inclined to pass final orders.

2. The petition for transfer is filed to withdraw and transfer the petition in F.C.M.C.No.9 of 2022 from the file of the District Family Court, Chengelpattu to the file of Principal District Family Court, Chennai.

3. The marriage between the petitioner and the respondent was solemnised on 03.09.1998 as per Hindu Rites and Customs. On account of misunderstanding, the husband and wife are living separately. The respondent filed maintenance in F.C.M.C.No.9 of 2022 on the file of the



Family Court, Chengalpet seeking maintenance for the wife and daughter.

The petitioner filed present transfer petitioner to transfer the maintenance petition from Chengalpet to Chennai.

4. The place of the respondent are considered for the purpose of adjudication of the maintenance case. The Court concerned has to consider the grant of interim maintenance in such circumstances taking note of the mitigating factors. If the 1st respondent wife is unemployed and the 2nd respondent daughter is being maintained by without any source of income, then the livelihood of the 2nd respondent is also to be protected by the Trial Courts.

5. In such circumstances, Courts are bound to grant interim maintenance to protect the livelihood of the minor children. In the present case, the respondent had already filed a maintenance case, before the Family Court at Chengalpet, which is pending. The reasons stated in the present transfer case are neither candid nor convincing.



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. In view of the facts and circumstances, this Court do not find any acceptable reasons for purpose of transferring the case. Consequently, the Transfer Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

10.01.2023

Jeni
Index : Yes
Speaking order

To

1.The Judge,
Family Court,
Chengalpattu.

2.The Judge,
Family Court,
Chennai.



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S.M.SUBRAMANIAM, J.

Jeni

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