



Tr.CMP No.1249 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-01-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.CMP No.1249 of 2022

And

CMP No.21216 of 2022

A.Jayanthi

.. Petitioner

vs.

K.Shivaji

.. Respondent

PRAYER : This Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in FCOP No.242 of 2022 from the file of the Family Court at Vellore and transfer the same to the file of the Sub Court at Poonamallee.

For Petitioner : Mr.R.Sampath Kumar

For Respondent : Mr.D.Padmanabhan



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ORDER

The present Transfer Civil Miscellaneous Petition is filed to withdraw the case in FCOP No.242 of 2022 from the file of the Family Court at Vellore and transfer the same to the file of the Sub Court at Poonamallee.

2. The marriage between the petitioner-wife and the respondent-husband was solemnised on 16.09.20219 as per Hindu Rites and Customs. From and out of the wedlock between the petitioner and the respondent, a male child was born and now aged about 2 years. The minor child is with the custody of the petitioner.

3. The respondent-husband filed FCOP No.242 of 2022 for restitution of conjugal rights on the file of the Family Court at Vellore.

4. The learned counsel for the petitioner states that she filed



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divorce petition in HMOP No.935 of 2022 on the file of the Sub Court at Poonamallee. The petitioner is unemployed and now both the petitioner as well as the the 2 year old male child are residing along with parents of the petitioner at Chennai. Thus the petitioner is depending on her parents even for her livelihood as well as her 2 year old male child and she is not in a position to travel all along from Chennai to Vellore to contest the restitution of conjugal rights filed by the respondent in FCOP No.242 of 2022, which is pending on the file of the Family Court at Vellore.

5. It is brought to the notice of this Court that the respondent-husband is not paying even the Interim Maintenance to safeguard his own child and now the petitioner is depending on her age-old parents even to feed her child. In such circumstances, the Courts are expected to step in and protect the livelihood of the minor child, which is the fundamental right ensured under the Constitution.

6. Whenever, the life of minor child is in question, the Courts



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are expected to protect the interest of the child and any non-protection in this regard would have larger societal repercussions and the High Court, being the Constitutional Court, is expected to grant Interim Maintenance in such circumstances even in the absence of any formal application by any one of the parties. If the High Court fails to grant Interim Maintenance in such circumstances, where the minor child is to be maintained by an unemployed mother, then the High Court is failing in its duty to protect the life of the minor child under the Constitution of India.

7. The learned counsel for the respondent objected the said contention by stating that the respondent is willing to take care of the minor child and the petitioner is not allowing the respondent to see the child and therefore, he is not in a position to pay the Interim Maintenance.

8. The learned counsel for the respondent reiterated that unless the petitioner permits the respondent to visit the child, he will not be in a position to pay the Interim Maintenance. The tenor of the respondent



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expressed through the learned counsel for the respondent shows the attitude and conduct of the respondent, who is none other than the father of the 2 year old male child. Such an approach of the respondent, at no circumstances, be encouraged by this Court.

9. Parents are duty bound to maintain their minor children. The 2 year old male child has to be taken care of by the father, who is the natural guardian and an earning member. The petitioner-wife is unemployed and therefore, the respondent-father has to maintain the child.

10. For grant of Interim Maintenance to the minor children, no application is required. Even in the absence of any application, the Courts are bound to consider grant of Interim Maintenance in the interest of the minor children and to protect their livelihood, which is the Fundamental Right to life under Article 21 of the Constitution of India.

11. Remedy of maintenance is the measure of social justice as



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envisaged under the Constitution to prevent the wife and the children from falling into destitution and vagrancy. Preamble and Article 39 and 15(3) of the Indian Constitution envisage social justice and positive State action for empowerment of women and children.

12. An order of Interim Maintenance is conditional on circumstance that the wife or husband, who makes a claim has no independent income sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The Court may take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The obligation of the husband to provide maintenance stands on a higher pedestal than the wife.



13. Regarding maintenance for minor children, the living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties. Serious disability or ill-health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

14. Due to pressure on various aspects, the parties to the matrimonial disputes are not even filing any formal application for grant of Maintenance/Interim Maintenance even for the minor child/children. In such circumstances, it is the bounden duty of the Court to ensure that the interest of the minor child/children are protected by granting Interim Maintenance in the absence of any formal application during the pendency of the matrimonial disputes between the husband and the wife.



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15. When the livelihood, lifestyle or education of the children are in question, then the Courts must act as a custodian of minor child/children and award Interim Maintenance to protect the interest of the minor children. In many cases unemployed mothers are maintaining their minor child/children, causing burden to the age-old parents and such circumstances must be seriously considered by the Courts. Grandparents are burdened with their minor children and the fathers of those minor children are the earning members and escaping from the clutches of their liability, which cannot be tolerated by the Courts. The responsibility of the father, being primary in nature, fathers are duty bound to maintain the minor child/children, when there is a matrimonial disputes between the spouses. Denial of visitation right is not a ground to grant exemption from the payment of maintenance. Visitation right is to be decided based on other facts and circumstances, which is not connected with the grant of maintenance to the minor child/children.



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16. This Court asked the learned counsel for the respondent to get instructions from the respondent-husband in respect of grant of Interim Maintenance only to the minor child.

17. On getting instructions from the respondent-husband over phone, the learned counsel for the respondent made a submission that the respondent is ready and willing to pay Interim Maintenance of Rs.10,000/- every month to the child towards expenses for the maintenance of the minor male child and requested this Court that the respondent may be permitted to see the child twice in a month.

18. In this regard, the learned counsel for the petitioner states that the respondent may be permitted to visit the child in the Court premises. But the learned counsel for the respondent objected the same that the visitation of the child be any other place other than the Court premises.

19. 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



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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



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judgments of Hon'ble Supreme Court of India:-

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"(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,



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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.



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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 safeguard 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)



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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."

20. It is needless to state that the petitioner is at liberty to file an appropriate maintenance petition claiming maintenance for herself and to the child and the final maintenance amount is to be determined after adjudication by the Competent Court. However, the Interim Maintenance is to be granted to protect and to meet out the basic needs of the minor child and any delay in this regard would affect the very livelihood of the minor child.

21. As far as the present Transfer CMP is concerned, since the petitioner is unemployed, depending on her parents and taking care of 2 year old male child and she is residing along with her parents at Chennai. That being the case, the case filed by the respondent is to be transferred to the



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place, where the petitioner resides.

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22. That being the factum, this Court is inclined to pass the following orders:

(1) FCOP No.242 of 2022 pending on the file of the Family Court at Vellore stands transferred to the file of the Sub Court at Poonamallee (now to be transferred to Sub Court at Ambattur, Thiruvallur District on account of bifurcation of territorial jurisdiction) forthwith to be tried along with HMOP No.935 of 2022 filed by the petitioner for divorce.

(2) The Family Court at Vellore is directed to transmit the case papers to the Sub Court at Poonamallee (now to be transferred to Sub Court at Ambattur, Thiruvallur District on account of bifurcation of territorial jurisdiction), within a period of four weeks from the date of receipt of a copy of this order.

(3) The respondent-husband is directed to pay the Interim Maintenance of Rs.10,000/- (Rupees Ten Thousand only) to the petitioner to maintain minor male child from January 2023 onwards.

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(4) The Interim Maintenance of a sum of Rs.10,000/- (Rupees Ten Thousand only) is to be paid on or before 10th day of every calendar month to the by means of a Demand Draft drawn in the name of the petitioner and the same shall be given to the respondent within a period of one week from today.

(5) In the event of any failure on the part of the respondent in paying Interim Maintenance to the minor male child, the petitioner is at liberty to move the contempt petition before this Court.

(6) The Interim Maintenance granted in the present Transfer Civil Miscellaneous Petition is not a bar for the petitioner to claim further maintenance in accordance with law.

(7) Regarding visitation right of the respondent, the petitioner may take the child to Sri Thiruvaleeswarar Temple (Shiva Temple) at Padi, Chennai-600 050 during the second and fourth week of every month preferably on Sunday and the respondent may be permitted to visit the child between 4.00 P.M. to 6.00 P.M. on that day.



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23. With the abovesaid directions, the Transfer Civil

Miscellaneous Petition stands allowed. However, there shall be no order as

to costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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1.The Judge,
Family Court,
Vellore.

2.The Judge,
Sub Court,
Poonamallee.

3.The Judge,
Sub Court at Ambattur,
Thiruvallur District.



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S.M.SUBRAMANIAM, J.

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