



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1217 of 2022

and

C.M.P.No.20815 of 2022

1.Mrs.J.Nisha

2.Minor Aanah

Daughter of Syed Amzeth

Petitioners 1 and 2 are residing at

No.40, Jankit Nagar, 15 Street,

Kadhakinar,

Madurai – 625 107

(Minor Aanah represented through
her mother and Natural Guardian
the 1st petitioner)

... Petitioners

Vs.

Mr.Syed Amzeth

... Respondent

Prayer: Transfer CMP is filed under Section 151 of the Civil Procedure Code, to withdraw and transfer the O.S.No.41 of 2022 pending on the file of the Family Court, Pondicherry to be tried along with M.C.No.189 of 2022 pending on the file of the Family Court, Madurai.



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For Petitioners : Mr.V.V.Sathya

For Respondent : No appearance

ORDER

The petition for transfer is filed to withdraw and transfer the O.S.No.41 of 2022 pending on the file of the Family Court, Pondicherry to be tried along with M.C.No.189 of 2022 pending on the file of the Family Court, Madurai.

2. The marriage between the 1st petitioner and the respondent was solemnised on 28.03.2021 as per the Muslim Rites and Customs. One female child was born from and out of the wedlock between the petitioner and the respondent and now aged about 1 year. Due to misunderstanding the 1st petitioner and the respondent are living separately. The 1st petitioner/wife has filed a Maintenance Case in M.C.No.189 of 2022 on the file of the Family Court, Madurai. The respondent/ husband filed O.S.No.41 of 2022 before the Family Court, Pondicherry for Divorce. The 1st petitioner/wife is unemployed and residing along with her parents at Madurai and depending on them for her livelihood. Further, she has to take care of the one year old



female child. Thus, the 1st petitioner is not in a position to spend, travel and contest the case filed by the respondent/ husband.

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3. This Court is of the considered opinion that the disputes are no way connected with the maintenance of a minor child. Dispute between the husband and wife is to be resolved in the manner known to law or they can go for Conciliation for reunion or otherwise. However, the interest of the minor child is of paramount importance and the Courts are bound to protect the interest of the minor children at all circumstances.

4. In the present case, the 1 year old female child is being maintained by the petitioner/wife. Contribution of the father is to be made and in the present case, admittedly, the respondent-father is not paying any maintenance, despite the fact that the Maintenance Case in M.C.No.189 of 2022 was already filed. The Trial Court also failed to consider grant of interim maintenance in such circumstances. Interim maintenance is to be granted, considering the facts and circumstances of the case. If there is a minor child and the child is to be maintained by the mother, then interim maintenance is to be ordered by the Courts even if there is no application



from either of the parties or otherwise.

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5. Maintenance being the livelihood of a child and Right to Life being an integral part of Article 21 and a Fundamental Right, the Courts are bound to interfere in such circumstances and ensure that the maintenance of the children are protected at all circumstances even during the sustenance of the Matrimonial dispute between the husband and wife. The agony of the child and its mental condition during the period of dispute between father and mother, all to be taken note of and the interim maintenance is to be ordered by the Courts even if there is no application or otherwise.

6. The quantum of maintenance to be ordered is to be considered based on the income status and lifestyle of the parties before the Court. Remedy of maintenance is a measure of social justice and envisaged under the Constitution to prevent the children from falling into destitution and vagrancy. Preamble of the Constitution and Article 39 and 15 (3) of the Indian Constitution envisage social justice and positive State action for empowerment of women and children. Thus, maintenance being the livelihood even in the absence of any petition by the parties, the Court must



order interim maintenance, taking note of the interest of the minor child and in the present case, the child is aged about 1 year old.

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7. This being the endeavour of this Court to ensure interim maintenance to be paid to the child for her maintenance, the actual maintenance to be determined needs to be adjudicated by the competent Court by affording opportunity to both the parties.

8. Considering the facts and circumstances, the O.S.No.41 of 2022 pending on the file of the Family Court, Pondicherry stands transferred to the Family Court, Madurai forthwith. The Family Court, Pondicherry is directed to transmit the case papers to the Family Court, Madurai to be tried along with M.C.No.189 of 2022 within a period of four (4) weeks from the date of receipt of a copy of this order.

9. In respect of the maintenance case in M.C.No.189 of 2022, the Trial Court has to consider the livelihood of the unemployed mother and the minor child, aged about 1 year old.



10. In such circumstances, to protect the interest of the child and its right, the Court has to consider the grant of interim maintenance without causing any undue delay and the quantum of interim maintenance is to be fixed based on the status, lifestyle and income etc., of the parties.

11. With the abovesaid directions, the Transfer Civil Miscellaneous Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.01.2023

skr/kak
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Judge,
Family Court,
Pondicherry.

2.The Judge,
Family Court,
Madurai.



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S.M.SUBRAMANIAM, J.

skr/kak

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