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Tr.C.M.P.No.1264 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1264 of 2022

and

C.M.P.No.21384 of 2022

Mrs.Arockia Mary

... Petitioner

Vs.

Mr.Alex Pandian

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the IDOP No.43 of 2022 from the file of the Principal District Court, Thiruvallur and transfer the same to the Principal Family Court at Chennai.

For Petitioner : Ms.R,Girija

For Respondent : Mr.A.Balaji



ORDER

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The marriage between the petitioner and the respondent was solemnised on 21.08.2020 as per Christian rites and customs. One male child was born from and out of the wedlock between the petitioner and the respondent who is now aged about one and a half years. The minor child is in the custody of the petitioner/wife and the respondent filed IDOP No.43 of 2022 for Divorce on the file of the Principle District Court at Thiruvallur.

2.The learned counsel for the petitioner states that the petitioner/wife is residing along with her parents and with their support she is taking care of the one and a half-year-old child. Thus, she is not in a position to spend travel and contest the divorce case filed by the respondent. The learned counsel for the petitioner further contended that the respondent is not even taking care of the child nor paying any maintenance for the welfare of the child. She is depending on her parents even for feeding the child and thus, made a request to grant interim maintenance for the purpose of protecting the interest of the child.

3. Parents are duty bound to maintain their minor children. The minor



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.

4. 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.

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

6. Many citizen in our Great Nation on account of certain matrimonial issues, never think of filing a formal petition for maintenance even to the minor children. In such circumstances, Courts are expected to consider and



grant Interim Maintenance to protect the livelihood of the minor children during the pendency of the matrimonial disputes between the husband and wife.

7. Court must act as a custodian of minor children, when such children are neglected by either of the parents. When the mother of the child is unemployed and living along with her parents mostly is the situation prevailing in our country. Grandparents are burdened with the minor children and the fathers are attempting to escape from the clutches of liability, which cannot be tolerated by the Courts. The father being the natural guardian under the Guardian and Wards Act, is bound to maintain his minor daughter or son by paying maintenance even in such circumstances, where there is a matrimonial dispute or for visitation right. Such rights are to be established considering various other facts and circumstances. Whether the father or mother is entitled for a visitation is to be considered based on the facts and circumstances of each case and not allowing the father or mother to have visitation right will not be a ground to deny Interim Maintenance to the minor child during the pendency of the matrimonial disputes.



8. The respondent who is the father of the one-and-a-half-year-old minor child is directed to pay the interim maintenance of Rs.5,000/- on or before the 10th day of every English calendar month to the petitioner either through RTGS or by way of Bank Demand Draft from the month of November of 2022 and continue paying it without committing any default from February 2023 onwards since the Interim maintenance is granted to protect the livelihood of the minor child.

9.The learned counsel for the petitioner undertakes that she will produce the bank account details and other details for the purpose of transferring the funds through RTGS or by way of Bank Demand Draft.

10.The learned counsel for the respondent made a submission that visitation rights may be provided to the respondent to visit the child. The petitioner, who is present before this Court, has no objection to provide visitation right to the respondent and accordingly, the petitioner herein is directed to permit the respondent to visit the child on every Sunday in a Church situated nearby the petitioner's residence, between 4 pm and 6 pm.



11. Considering the facts and circumstances, the IDOP No.43 of 2022, pending on the file of the Principal District Court at Thiruvallur, stands transferred to the Principal Family Court at Chennai. The Principal District Court at Thiruvallur, is directed to transmit the case papers to the Principal Family court at Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. 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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01.02.2023

Index : Yes
Speaking order



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S.M.SUBRAMANIAM, J.

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To

1. Principal District Court, Thiruvallur.
2. Principal Family Court at Chennai.

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