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Tr.C.M.P.No.1209 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 31.01.2023**

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**Tr.C.M.P.No.1209 of 2022**

**and**

**C.M.P.No.20773 of 2022**

Joshni Saghay

... Petitioner

Vs.

J.Infant Jeison

... Respondent

**Prayer:** Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the IDOP.No.569 of 2022, on the file of Family Court, Kanniyakumari at Nagercoil and transfer the same to the file of Family Court, Coimbatore.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.C.K.M.Appaji

### **ORDER**

The petition for transfer is filed to withdraw the IDOP.No.569 of 2022 on the file of Family Court, Kanniyakumari at Nagercoil and transfer the same to the file of Family Court, Coimbatore.



2. The marriage between the petitioner and the husband was solemnized on 18.01.2021 as per the Christian Rites and Customs at St. Anthony's Church, Azhagappapuram. A male child born on 28.02.2022, out of the wedlock between the petitioner and the respondent and now 11 months old. The child is with the custody of the petitioner/wife.

3. The learned counsel for the petitioner/wife states that the petitioner is unemployed and residing with the support of her parents. Thus, she has already filed a Maintenance Case in M.C.No.234 of 2022, which is now pending on the file of the Additional Family Court at Coimbatore. The respondent/husband filed I.D.O.P.No.569 of 2022 for divorce on the file of the Family Court, Kanniyakumari at Nagercoil.

4. The learned counsel for the respondent/husband raised an objection by stating that the petitioner/wife is native of Nagercoil and she is residing at Nagercoil and thus, the present petition is to be rejected. The Divorce case was filed by the respondent/husband for the convenience of the petitioner at Nagercoil, despite the fact that the respondent is residing at Tirunelveli.



5. However, the learned counsel for the petitioner/wife replied by stating that the petitioner is shifted her residence to Coimbatore and changed her address in Aadhar Card and other relevant documents and residing along with the 11 months old male child at Coimbatore in an Apartment and more so, the Maintenance Case is also filed before the Additional Family Court at Coimbatore.

6. The learned counsel for the petitioner/wife made a submission that the petitioner/wife is unable to maintain the child and she has to depend upon her father for the maintenance of the child. In such circumstances, the Court concerned is expected to consider grant of interim maintenance to protect the livelihood of the minor child. Court concerned has to consider the mitigating factors in such circumstances and grant interim maintenance atleast for the minor child, till such time, the final maintenance is determined after adjudication.

7. 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.

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8. 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.

9. 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.



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10. 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.

11. 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.

12. 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 dispute 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.

13. In the present case, the respondent/husband was holding the post of an Engineer in an Oil company at Rajasthan at the time of marriage and was drawing the salary of Rs.1,00,000/- (Rupees One Lakh only) per month.



14. Considering the background and family status of the petitioner and the respondent, this Court is inclined to pass the following orders:

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(1) I.D.O.P.No.569 of 2022 pending on the file of the Family Court, Kanniyakumari at Nagercoil stands transferred to the file of the Additional Family Court at Coimbatore forthwith.

(2) The Family Court, Kanniyakumari at Nagercoil is directed to transmit the case papers to the Additional Family Court at Coimbatore 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.5,000/- (Rupees Five Thousand) to the minor child, who is now living with the petitioner-mother with effect from February 2023 onwards.

(4) The Interim Maintenance of a sum of Rs.5,000/- (Rupees Five Thousand) is to be paid on or before 10<sup>th</sup> day of every English calendar month by way of RTGS to the Bank Account of the petitioner-wife or by way of Bank Demand Draft to her.

(5) In the event of any failure on the part of the respondent in paying the Interim Maintenance to the minor 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.

15. 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.

**31.01.2023**

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

To

1. The Judge,  
Family Court,  
Kanniyakumari,  
Nagercoil.

2. The Judge,  
Family Court,  
Coimbatore.



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**S.M.SUBRAMANIAM, J.**

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