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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.1236 of 2022
and
C.M.P.Nos.20993 and 20994 of 2022

Tmt.K.Sumithra ... Petitioner

Vs.

R.P.Duraibabu @Kannan ... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code to withdraw the FCOP No.57 of 2022 from the file of the Family Court, Chengalpattu and to transfer the same to the VI Additional Family Court, Chennai to try along with M.C.No.41 of 2020.

For Petitioner : Mr.S.Ravichandran

For Respondent : No appearance

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O R D E R

The petition for transfer is filed to withdraw and transfer the petition filed in FCOP No.57 of 2022 from the file of the Family Court, Chengalpattu to the file of the VI Additional Family Court, Chennai, to be tried along with M.C.No.41 of 2020, which is pending.

2. The marriage between the petitioner and the respondent was solemnised on 25.04.2010 as per the Hindu Rites and Customs. One female child was born from and out of the wedlock between the petitioner and the respondent and now aged about 11 years. Due to misunderstanding, the petitioner and the respondent are living separately. The respondent/husband filed FCOP No.57 of 2022 before the Family Court, Chengalpattu for Dissolution of Marriage. The petitioner/wife has filed a Maintenance Case in M.C.No.41 of 2020 on the file of the VI Additional Family Court, Chennai. The petitioner/wife is unemployed and now residing along with her parents at Chennai and depending on them for her livelihood. Further, she has to take care of the female child, who is school going. Thus, the 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 11 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.41 of 2020 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.

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

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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 11 years old and School going.

7. This being the endeavour of this Court to ensure interim maintenance to be paid to the child for her maintenance, the actual

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maintenance to be determined needs to be adjudicated by the competent Court by affording opportunity to both the parties.

8. 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*

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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*

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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 5 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*

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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."

9. Considering the facts and circumstances, the FCOP No.57 of 2022 pending on the file of the Family Court, Chengalpattu stands transferred to

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the VI Additional Family Court, Chennai forthwith. The Family Court, Chengalpattu is directed to transmit the case papers to the VI Additional Family Court, Chennai to be tried along with M.C.No.41 of 2020 within a period of four (4) weeks from the date of receipt of a copy of this order.

10. The VI Additional Family Court, Chennai is directed to consider for grant of interim maintenance, without causing any undue delay.

11. With the abovesaid directions, the Transfer Civil Miscellaneous Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

05.01.2023

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

To

1.The Judge,
Family Court,
Chengalpattu.

2.The Judge,
VI Additional Family Court,
Chennai.

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S.M.SUBRAMANIAM, J.

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