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Tr.C.M.P.No.1241 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1241 of 2022

and

C.M.P.No.21080 of 2022

N.Manjari @ Keerthika
W/o.Sudhagar

... Petitioner

Vs.

M.Sudhagar
S/o.Manickavel

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code praying to withdraw the proceedings in H.M.O.P.No.245 of 2022 on the file of Family Court, Cuddalore and transfer the same to Family Court, Chennai.

For Petitioner : Ms.P.Harsha
for Mr.A.Thirumaran
For Respondent : Mr.S.Lakshmanasamy

ORDER

This petition has been filed seeking transfer of H.M.O.P.No.245 of 2022 on the file of Family Court, Cuddalore, to the file of Family Court, Chennai.



2. The marriage between the petitioner and the respondent was solemnized on 27.01.2008 as per the Hindu Rites and Customs and through the wedlock, a girl child was born, now aged about 14 years. Due to misunderstanding, the petitioner and the respondent are living separately. The minor girl is now under the custody of the petitioner mother.

3. Learned counsel for the petitioner submits that the respondent filed H.M.O.P.No.245 of 2022 on the file of Family Court, Cuddalore, seeking divorce. The petitioner is unemployed and is suffering from heart ailments and is taking treatment at Chennai. More so, the petitioner has to look after the minor girl child. Thus, the petitioner is not able to travel and contest the case at Cuddalore.

4. The petitioner is depending on her parents even for her livelihood and to maintain the minor girl child and the respondent is not even paying any maintenance for the child. In this regard, the petitioner is at liberty to move the concerned Court seeking maintenance. In the event of filing any maintenance petition, the Court has to consider granting interim maintenance without loss of time and final maintenance will be decided after adjudication. The educational expenses, livelihood and other interests of the minor children are to be protected



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by the Court concerned, if they are neglected by the father, who is the natural guardian. Thus, the Courts cannot keep such maintenance petition pending for an indefinite period. Once the maintenance petition is filed, the Court concerned has to ascertain the primary facts and grant interim maintenance till such time the final maintenance is determined. In this regard, the petitioner is at liberty to move the appropriate Court for grant of maintenance, more specifically, to meet the education and other expenditures of the minor girl child.

5. As far as the transfer of H.M.O.P.No.245 of 2022 on the file of Family Court, Cuddalore, is concerned, the petitioner is unemployed and is taking treatment for her heart ailments and that apart, she has to maintain the minor girl child. Hence, this Court is inclined to consider the transfer petition.

6. Learned counsel for the respondent raised an objection by stating that the respondent is also not gainfully employed. Such submission cannot be trusted upon and requires further enquiry.

7. Learned counsel for the respondent submits that that respondent has to take care of her aged mother, who is suffering from ailments.

8. As per the submissions, it is found that the age of the mother of the



respondent is 75 years and the petitioner, who is a young woman, is taking treatment for heart ailments and has to take care of her minor girl child. The respondent is not even maintaining her own daughter and thus, no consideration is required in respect of the submissions made on behalf of the respondent.

9. 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 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 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 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 Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.”

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(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.”

10. Considering the facts and circumstances, H.M.O.P.No.245 of 2022 on the file of Family Court, Cuddalore, stands transferred to the file of Family Court, Chennai. The Family Court, Cuddalore, is directed to transmit the case papers in H.M.O.P.No.245 of 2022 to the Family Court, Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. The petitioner is at liberty to move an application seeking maintenance before the Family Court, Chennai and in the event of filing any such application, the Court concerned has to dispose of the matter as



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expeditiously as possible and pending consideration of the maintenance case, the Court concerned has to grant interim maintenance for the educational expenses and livelihood of the minor child, who is living along with the petitioner.

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.

06.01.2023

Index : Yes
Speaking order
Neutral Citation : Yes
gm

To
1.The Family Court,
Cuddalore.

2.The Family Court,
Chennai.

S.M.SUBRAMANIAM., J



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