



Tr.CMP No.1254 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-01-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Tr.CMP No.1254 of 2022

And

CMP No.21309 of 2022

J.Sathiyavani

.. Petitioner

vs.

S.Nijanthan

.. Respondent

PRAYER : This Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the case in HMOP No.226 of 2022 from the file of the III Additional Family Court at Chennai and transfer the same to the file of the Family Court at Chengalpattu.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.S.Vivek



Tr.CMP No.1254 of 2022

are depending on her parents in all respects. Thus she is not in a position to travel all along from Guduvancherry to Chennai to contest the divorce case filed by her before the III Additional Family Court at Chennai.

4. On 25.01.2023, the respondent-husband appeared in person before this Court and made a submission that he is willing for re-union and in view of the said submission, this Court directed the petitioner to be present along with the child before this Court on 27.01.2023.

5. Today i.e., on 27.01.2023, when the matter is taken up for further hearing, both the petitioner along with the child and the respondent are present before this Court.

6. The petitioner-wife made a submission that for the past about 4 years she is living separately along with her minor male child in her parents house at Guduvancherry. The respondent-husband has not even paid any monthly maintenance for the welfare of the child so far. The petitioner-wife



further says that even in the year 2017, when she left the respondent-husband, he was earning a substantial amount as salary in Singapore and as of now, he is earning more than that.

7. Despite the fact that the respondent-husband is earning substantial amount as salary in Singapore, he has not paid the maintenance even to his own child. Regarding the matrimonial disputes, the parties are at liberty to adjudicate the same in the divorce petition filed.

8. The learned counsel for the respondent, based on the instructions given by the respondent, made a submission that the respondent is ready and willing to pay the Interim Maintenance of Rs.20,000/- per month to the child. The respondent has given an undertaking to pay Interim Maintenance of Rs.20,000/- per month.

9. The respondent, being the father, is responsible for the maintenance of the child. Thus he has to share the maintenance along with the



Tr.CMP No.1254 of 2022

petitioner for the livelihood of the child, which is now with the custody of the petitioner-wife. The Interim Maintenance of Rs.20,000/- per month is directed to be paid by the respondent to the petitioner on or before the 10th day of every calendar month, which is to be deposited in the Bank Account of the petitioner and the learned counsel for the petitioner undertakes that she will furnish the details of the petitioner-wife Bank Account Number to the learned counsel for the respondent, who in turn has to provide such information to the respondent-husband.

10. The learned counsel for the respondent reiterated that the petitioner shall permit the respondent to visit the child, whenever he comes to India.

11. Parents are duty bound to maintain their minor children. The minor male 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 minor male child.



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12. 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.

13. 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.

14. 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.

15. 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.



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16. 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.

17. 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



Tr.CMP No.1254 of 2022

nature, fathers are duty bound to maintain the minor child/ children, when there is a matrimonial disputes 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.

18. In the present case, the transfer of the case is to be considered, since the petitioner is now living along with her parents at Guduvancherry. That being the case, the case filed by the petitioner in HMOP No.226 of 2022 pending on the file of the III Additional Family Court at Chennai is to be transferred to the place, where the petitioner now resides.

19. 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:-



Tr.CMP No.1254 of 2022

(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:-



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Tr.CMP No.1254 of 2022

"(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



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Tr.CMP No.1254 of 2022

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



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Tr.CMP No.1254 of 2022

the long distance journey, the 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 safeguard 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



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Tr.CMP No.1254 of 2022

vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides."

20. Accordingly, this Court is inclined to pass the following orders:

(1) HMOP No.226 of 2022 pending on the file of the III Additional Family Court at Chennai stands transferred to the file of the Family Court at Chengalpattu forthwith.

(2) The III Additional Family Court at Chennai is directed to transmit the case papers to the Family Court at Chengalpattu, 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.20,000/- (Rupees Twenty Thousand) to the minor male child, who is now living with the petitioner-mother for the purpose of maintenance from January 2023 onwards, till such time, the maintenance or otherwise is determined by the Competent Court for which the parties are at liberty to approach the Competent Court.



Tr.CMP No.1254 of 2022

(4) The Interim Maintenance of a sum of Rs.20,000/- (Rupees Twenty Thousand) is to be paid on or before 10th day of every English calendar month to the Bank Account of the petitioner-mother and the learned counsel for the petitioner undertakes that the Bank Account Number along with the details will be provided to the learned counsel for the respondent for informing the same to the respondent within a period of one week from today.

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

21. 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.



Tr.CMP No.1254 of 2022

27-01-2023

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

1.The III Additional Judge,
III Additional Family Court,
Chennai.

2.The Judge,
Family Court,
Chengalpattu.

S.M.SUBRAMANIAM, J.

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Tr.CMP No.1254 of 2022

Tr.CMP No.1254 of 2022

27-01-2023