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Tr.C.M.P.No.1312 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1312 of 2022

and

C.M.P.No.22120 of 2022

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... Petitioner

Vs.

Saran Rozario

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the I.D.O.P.No.520 of 2022 on the file of the Family Court at Salem and transfer the same to the Family Court at Thiruvannamalai.

For Petitioner

: Mr.K.V.Muthu Visakan

ORDER

The petition for transfer is filed to withdraw the I.D.O.P.No.520 of 2022 on the file of the Family Court at Salem and transfer the same to the Family Court at Thiruvannamalai.



2. The marriage between the petitioner / wife and the respondent / husband was solemnised on 30.08.2018 as per the Christian Rites and Customs. One male child was born from and out of the wedlock between the petitioner and the respondent. Due to misunderstanding, the petitioner and the respondent are living separately. The respondent / husband filed I.D.O.P.No.520 of 2022 for Divorce, now pending on the file of the Family Court at Salem.

3. The learned counsel for the petitioner / wife states that the respondent / husband is working as a Teacher in Government School and not paying any maintenance even to the minor child. As far as the minor child is concerned, the father is the natural guardian as per the Guardians and Wards Act, 1980 and therefore, he is responsible for maintenance of the child. The livelihood of the child is to be protected by the Courts and when the mother of the child is unemployed, the duty costs upon the father to pay maintenance during the pendancy of the matrimonial disputes.

4. Even in the absence of any formal application, Courts are empowered to grant interim maintenance, in order to protect the livelihood



of the child, which is a guarantee provided under Article 21 of the Constitution of India.

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5. Right to live cannot be denied to the children and if it is denied or prejudiced, then the Courts being the custodian is empowered to step in and grant interim maintenance to the children even in the absence of any formal application. Thus, this Court is of the considered opinion that right of children, which is recognised worldwide is to be considered, whenever such circumstances are placed before the Courts.

6. 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.

7. 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.

8. 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.



9. 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.

10. 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 those 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.

11. In the present case, the learned counsel for the petitioner states that the petitioner / wife is unemployed and now residing along with her parents. Even for the maintenance of the child, the petitioner / wife has to depend on their aged parents, which would be unreasonable and thus, this Court is inclined to grant interim maintenance in favour of the minor child, who is aged about 3 years. More specifically, to protect the livelihood enshrined under Article 21 of the Constitution of India.

12. Considering the facts and circumstances, the respondent / husband is directed to pay the sum of Rs.5,000/- per month towards interim maintenance to the minor child, which is to be paid to the petitioner through RTGS in the bank account of the petitioner / wife or through Bank Demand Draft on or before 10th day of every English calendar month.



13. In the event of failure on the part of the respondent / husband in paying the monthly maintenance of Rs.5,000/- per month, the petitioner / wife is at liberty to file contempt proceedings before this Court.

14. With these directions, the Transfer Petition in Tr.C.M.P.No.1312 of 2022 stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

02.02.2023

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Index : Yes

Speaking order

Neutral Citation: Yes

To

1.The Judge,
Family Court,
Salem.

2.The Judge,
Family Court,
Thiruvannamalai.



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S.M.SUBRAMANIAM, J.

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