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Tr.C.M.P.No.1331 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1331 of 2022

and

C.M.P.Nos.22466, 22467 and 22470 of 2022

S.Gomathie Priya

... Petitioner

Vs.

E.Venkatesh Perumal

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the H.M.O.P.No.411 of 2022 pending on the file of the Family Court, Tirunelveli and transfer the same to the Family Court at Chennai.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.M.Sankar Ganesh

ORDER

The Civil Revision Petition is filed to withdraw the H.M.O.P.No.411 of 2022 pending on the file of the Family Court, Tirunelveli and transfer the same to the Family Court at Chennai.



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2. The marriage between the petitioner and the respondent was solemnized on 03.11.2006 as per Hindu Rites and Customs. Two children were born from and out of the wedlock between the petitioner and the respondent and the daughter namely minor Eshapurnikka is aged about 15 years and the son namely Eshwersaisriram is aged about 9 years. Both the children are now living with the petitioner / mother at Chennai. Due to misunderstanding and on account of certain disputes, the petitioner and the respondent are living separately. The respondent filed H.M.O.P.No.411 of 2022 for Dissolution of Marriage, now pending on the file of the Family Court at Tirunelveli. The petitioner / wife filed Maintenance Case in M.C.No.8 of 2023, now pending on the file of the VII Additional Family Court, Chennai.

3. The petitioner and the respondent along with their children were residing in United Kingdom and the petitioner returned back to India along with the family on 03.11.2022. The respondent / husband is now residing at Tirunelveli, wherein he has filed Divorce Petition in H.M.O.P.No.411 of 2022 before the Family Court at Tirunelveli.



4. The children are unable to secure admission in Schools at Chennai on account of the fact that the original certificates are missing. In this regard, the petitioner / wife filed a police complaint and during the relevant point of time, she had given a complaint for man missing also, since the whereabouts of the respondent / husband was not known. The Police found that the allegations are relating to matrimonial dispute and no further action was taken. However, FIR was registered in FIR No.612 dated 06.11.2022.

5. Today, both the petitioner and the respondent along with the minor daughter are present before this Court.

6. Matrimonial dispute between the petitioner and the respondent are to be adjudicated in the Divorce Petition filed by the respondent / husband. However, this Court has to protect the interest of the children, as they have discontinued their education and returned back to India. The minor daughter is aged about 15 years and capable of understanding. She informed this Court that she has to continue her studies with reference to the syllabus, which she had studied in United Kingdom.



7. Accordingly, Mr.Veeraraghavan, learned counsel voluntarily assisted the Court for the purpose of securing school admission to the two children and as per his information, the school namely Lalaji Memorial Omega International School, Omega School Road, No.79, Pallavaram Road, Kovur, Chennai has agreed to admit the children in their school and further they have agreed that they need not produce all relevant certificates at present and they will be allowed to continue their education with immediate effect. The voluntary services rendered by Mr.Veeraraghavan, learned counsel stands appreciated and placed on record.

8. In this regard, the respondent shall approach the Principal of the School and admit the children and facilitate them to continue their education without any gap. The respondent / husband is raising several allegations against the petitioner / wife, which need not be adjudicated in the present Transfer Petition, as those allegations are to be adjudicated with reference to the evidences and other documents, if available in the Divorce Petition. However, this Court has to protect the interest of the children, as the petitioner / wife is unemployed and living separately at Chennai and two grown up children are to be maintained.



9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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14. 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 but the fathers of those minor children, who are the earning members are 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 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.



15. In this regard, the respondent agreed to pay a sum of Rs.10,000/- as monthly maintenance. However, this Court, considering the educational and other living expenditures at Chennai, is inclined to fix a sum of Rs.15,000/- as interim maintenance, which is to be paid by the respondent / husband to the petitioner / wife for the purpose of protecting the educational expenses and livelihood of the children, since they were brought up at United Kingdom in a particular lifestyle. The respondent / husband is an I.T. Professional and he also agreed to pay the said sum of Rs.15,000/- per month towards interim maintenance. Regarding further claim of compensation or maintenance by the petitioner, the issues are to be adjudicated before the Competent Court and the parties can workout for re-union also through conciliation proceedings.

16. The petitioner and the respondent are living together for the past more than 15 years and they have to take care of two grown up children and therefore, they may go for conciliation proceedings for the purpose of re-union or otherwise.



17. In respect of the missing original certificates of the children and the petitioner / wife, the respondent / husband is duty bound to secure duplicate certificates from the Competent Authorities / University / School concerned and hand over the same to the petitioner / wife for the purpose of producing the same before the school concerned and for the purpose of securing employment to the petitioner / wife.

18. In this regard, the petitioner / wife agrees to co-operate and put her signature in all necessary forms and wherever required. However, it is made clear that the respondent / husband should make arrangements for securing the duplicate certificate from the Competent Authority / University / School concerned. If the presence of the petitioner / wife is required for securing duplicate certificate in any of the University in Tamil Nadu, she will co-operate for securing the duplicate certificates by appearing in person, if asked by the Competent Authorities / University / School concerned.

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:-



(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."*



(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.”

20. Considering the facts and circumstances, this Court is inclined to pass the following orders:-

- (i) the H.M.O.P.No.411 of 2022, pending on the file of the Family Court at Tirunelveli stands transferred to the VII Additional Family Court at Chennai to be tried along with the Maintenance Case in M.C.No.8 of 2022;



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(ii) the respondent / husband is directed to pay the interim maintenance of Rs.15,000/- per month with effect from January 2023 onwards and the said amount is directed to be paid on or before 10th day of every English calendar month, either through RTGS in the bank account of the petitioner / wife or through bank Demand Draft.

21. Apart from the interim maintenance of Rs.15,000/- per month, the respondent / husband is directed to pay all the school fees directly to the School administration or through the petitioner / wife, who in turn, shall produce the receipt issued by the School authorities.

22. The interim maintenance and the payment of the school fees granted by this Court is not a bar for the petitioner / wife to claim final maintenance by initiating appropriate proceedings.

23. In the event of any failure on the part of the respondent / husband in paying the interim maintenance as granted by this Court in the present Transfer Petition, the petitioner / wife is at liberty to move contempt proceedings before this Court.



24. With these directions, the Transfer Petition in Tr.C.M.P.No.1331 of 2022 stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

30.01.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

1.The Judge,
Family Court,
Tirunelveli.

2.The Judge,
Family Court,
Chennai.



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S.M.SUBRAMANIAM, J.

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30.01.2023