



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1343 of 2022

and

C.M.P.No.22874 of 2022

Sivaranjani

... Petitioner

Vs.

Vijay

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw the HMOP No.39 of 2022 from the file of the Family Court, Tanjavur and transfer the same to the Family Court, Chennai.

For Petitioner : Mr.R.Prabakar

For Respondent : Mrs.R.Poornima



ORDER

The marriage between the petitioner and the respondent was solemnised on 31.08.2014 as per Hindu rites and customs. Two female children were born from and out of the wedlock between the petitioner and the respondent and they are now aged about seven and three years. Both the minor children are in the custody of the petitioner/wife and the respondent filed HMOP No.39 of 2022 for divorce on the file of the Family Court at Thanjavur,

2.The learned counsel for the petitioner states that the petitioner is employed in a private company at Chennai and therefore, she is not in a position to travel and contest the divorce case filed by the respondent/husband in HMOP No.39 of 2022 pending on the file of the Family Court at Thanjavur. The petitioner further states that an application seeking maintenance is also pending and the interim maintenance sought for is not granted by the Court.

3.As far as the grant of interim maintenance is concerned, the Court concerned has to consider it without any delay as the interest and welfare of



the minor children are to be protected. The livelihood of the minor children is to be considered and whenever an application for maintenance is filed by the aggrieved person, then such applications are to be decided without further delay. Interim Maintenance is to be granted taking note of the income, family status, and other factors and regarding the final maintenance, the issues between the parties are to be adjudicated and determined

4. Parents are duty bound to maintain their minor children. The minor child has to be taken care of by the father, who is the natural guardian and an earning member. 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.

5. 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. Many citizen in our Great Nation on account of certain matrimonial issues, never think of filing a formal petition for maintenance even to the minor children. In such circumstances, Courts are expected to consider and grant Interim Maintenance to protect the livelihood of the minor children during the pendency of the matrimonial disputes between the husband and wife.

6. Many women in our country may not be fully aware of their right to maintenance and more so, to the minor children. In the event of a dispute between the husband and the wife, mostly the wife is driven out to their parents' house along with the children and they are made to suffer. Under those circumstances, the Courts are expected to borne in mind that the right of the children for maintenance is to be protected and interim maintenance is to be granted with immediate effect so as to save the children from destitution. An unemployed mother or even an employed mother may not be in a position to provide a better livelihood to the children while staying alone. Thus, an interim maintenance is the basic right of minor children which cannot be denied by the Courts even if no application for grant of such maintenance is filed by the wife.



7. 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 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 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



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S.M.SUBRAMANIAM, J.

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To

1. Family Court, Tanjavur
2. Family Court, Chennai.

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