



Tr.C.M.P(MD)No.243 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2023

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Tr.C.M.P(MD)No.243 of 2022
and
C.M.P(MD) No.4142 of 2022

R.Bhavadharani

... Petitioner

-Vs-

Satheesh Kumar

... Respondent

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the petition in H.M.O.P.No.233 of 2021 on the file of the Sub Court, Uthamapalayam and to transfer the same, to any Sub Court in Madurai or Thirumangalam, Madurai District.

For Petitioner : Mr.F.X.Eugene

For Respondent : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed seeking transfer of the proceedings in H.M.O.P.No.233 of 2021 from the file of



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the Sub Court, Uthamapalayam, to any Sub Court in Madurai or Thirumangalam, Madurai District.

2. The petitioner is the wife and the respondent is the husband. The marriage between the petitioner and the respondent was solemnized on 16.06.2006, as per the Hindu Rites and Customs. Subsequently, due to some difference of opinion, they separated. The respondent filed H.M.O.P.No.233 of 2021, before the Sub Court, Uthamapalayam, for the relief of Restitution of conjugal rights. Since the petitioner/wife is a resident of Madurai, she filed this present Transfer Civil Miscellaneous Petition to transfer the proceedings in H.M.O.P.No.233 of 2021, from the file of Sub Court, Uthamapalayam, to the Sub Court, Thirumangalam.

3.The learned counsel appearing for the petitioner submits that the distance between Madurai and Uthamapalayam is around 106 kms and the petitioner finds it very difficult to travel such a long distance to attend the Court proceedings at Uthamapalayam, as there is no one to accompany her.



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4.This Court vide order dated 13.06.2022 ordered notice to the respondent in this transfer civil miscellaneous petition. Notice sent by the petitioner was returned as Door locked. Therefore, fresh notice was ordered and the petitioner was also permitted to serve notice on the learned counsel, who represented the respondent before the trial Court. The petitioner has also filed a proof of service that he has served notice on the learned counsel, who is appearing for the respondent and the name of the respondent is also printed in the cause list, however, there is no representation for the respondent. It appears that the respondent is evading service of notice.

5.The Hon'ble Apex Court in the case of *Amitha Shah -vs- Virendar Lal Shah*, reported in *(2003)10 SCC 609*, has held that the convenience of the wife and more particularly the child must be taken into account while deciding the petition for transfer. Further, in the case of *Rajani Kishor Paradeshi Vs Kishor Babulal Paradeshi* reported in *(2005) 12 SCC 237*, the Hon'ble Apex Court has held that in such type of transfer petitions, the convenience of the wife is to be preferred over the convenience of the husband.



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6. This Court being satisfied with the reasons stated in the affidavit filed in support of this petition and also taking into consideration that the convenience of wife is to be taken into consideration at the time of considering transfer petitions as held by the Hon'ble Supreme Court in the judgments cited supra, is inclined to allow the present petition.

7. In the light of the above, this transfer civil miscellaneous petition stands allowed. The proceedings in H.M.O.P.No.233 of 2021 on the file of the Sub Court, Uthamapalayam, is withdrawn and ordered to be transferred to the file of the Sub Court, Thirumangalam. The learned Subordinate Judge, Uthamapalayam, is directed to transmit the entire case records to the Sub Court, Thirumangalam, forthwith and the learned Subordinate Judge, Thirumangalam, who in turn shall dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

27.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Sub Court, Uthamapalayam.
2. The Sub Court, Thirumangalam.



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B.PUGALENDHI, J.

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Order made in
Tr.C.M.P(MD)No.243 of 2022
and
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27.01.2023