



WEB COPY



TR.CMP(MD)No.646 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

TR.CMP(MD)No.646 of 2022

and

C.M.P (MD)No.10233 of 2022

Ishwarya

... Petitioner

Vs

S.Umasankar

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C, to transfer the case in HMOP.No.129 of 2022 pending on the file of the Judge, Family Court, Srivilliputhur to the Judge, Family Court, Madurai and take up the case with HMOP.No.658 of 2022 filed for restitution of conjugal rights before the Family Court, Madurai.

For Petitioner : Mr.M.Sakundala Devi

For Respondent : Mr.PR.Boomee Rajan

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of the case in HMOP.No.129 of



TR.CMP(MD)No.646 of 2022

2022 from Family Court, Srivilliputhur to Family Court, Madurai.

2.The marriage between the petitioner and the respondent was solemnized on 08.11.2021 at Srivilliputhur and now due to misunderstanding between them the respondent/ husband has filed a petition fore dissolution of the marriage in HMOP.No.129 of 2022. The petitioner has approached this Court by way of this transfer civil miscellaneous petition to transfer the above proceedings from Family Court, Srivilliputhur to Family Court, Madurai on the ground that she is depending upon her aged parents, no one is there to accompany her and therefore she finds it difficult to appear before Court at Madurai. The learned Counsel for the petitioner further submits that the petitioner is not having sufficient means. While so the trial Court passed an ex-parte order without providing opportunity to the petitioner.



TR.CMP(MD)No.646 of 2022

3.The learned Counsel for the respondent submits that the case which is sought to be transferred has already been allowed by ex-parte order dated 19.11.2022 and therefore, this petition is not maintainable at this stage.

4.In response, the learned Counsel for the petitioner has produced the case status obtained from the E-Courts website and claims that by order dated 23.11.2022 the said HMOP was restored to file and it is now pending.

5.The Hon'ble Apex Court in the case of **Amitha Shah vs- Virendar Lal Shah**, reported **(2003)10 SCC 609** has held that *the convenience of the wife and more so of the child must be taken into account while deciding the petition for transfer* and 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.

3/6



TR.CMP(MD)No.646 of 2022

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 with the following directions:

(i)The case in HMOP.No.129 of 2022 on the file of the Family Court, Srivilliputhur is transferred to Family Court, Madurai;

(ii)The learned Judge, Family Court, Srivilliputhur is directed to send the above case records within a period of fifteen days from the date of receipt of a copy of this order to the learned Judge, Family Court, Madurai, who in turn, on receipt of the case,



TR.CMP(MD)No.646 of 2022

WEB COPY

shall dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition stands closed.

06.01.2023

Index: Yes/No

To

- 1.The Judge,
Family Court,
Srivilliputhur.
- 2.The Judge,
Family Court,
Madurai.



WEB COPY



TR.CMP(MD)No.646 of 2022

B. PUGALENDHI , J.

dsk

TR.CMP (MD) No. 646 of 2022

06.01.2023