



Tr.C.M.P(MD)No.698 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

Tr.C.M.P(MD)No.698 of 2022

and

C.M.P(MD)No.11101 of 2023

S.Nanthakumar

...Petitioner/
Respondent

Vs.

K.Gayathri

...Respondent/
Petitioner

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 read with 151 of Code of Civil Procedure, to withdraw the case in H.M.O.P.No.1004 of 2022 pending on the file of the Family Court, Madurai and transfer the same to the Subordinate Judge, Melur, Madurai District.

For Petitioner : Mr.P.Gunasekaran

For Respondent : Mr.S.M.Kadhar

ORDER

The present transfer civil miscellaneous petition has been filed to transfer H.M.O.P.No.1004 of 2022 from the file of the Family Court, Madurai to the file of the Subordinate Judge, Melur, Madurai District.



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2. The specific case of the petitioner is that the petitioner has already instituted H.M.O.P.No.148 of 2021 as early as on 16.12.2021 before the Sub Court, Melur. In which proceedings, the respondent has also entered appearance through her learned counsel. After entering appearance before the said Court, the respondent also attempted to file transfer O.P in Tr.O.P.No.64 of 2022, which came to be dismissed by the learned Principal District Judge, Madurai vide order, dated 07.03.2023. It is submitted that the respondent has been filed H.M.O.P.No.1004 of 2022 only to harass the petitioner by making it seem if she is interested in rejoining the petitioner.

3. It is submitted that the petitioner is working as a Driver in Aavin and taking care of two minor children. That apart, it is submitted that the respondent has abandoned the two children and has no other inconvenience. It is submitted that if the two cases are tried together, the physical appearance of the parties may also not be required for routine hearing. On the other hand, the petitioner will be put to lot of inconvenience as the petitioner is not only employed but is also taking care of two minor children and his aged parents.



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4. The learned counsel for the respondent on the other hand submits that the respondent was unaware of the transfer civil miscellaneous petition filed by the petitioner. It is submitted that the learned Principal Judge dismissed the Tr.O.P.No.64 of 2022 on the ground that this Court had granted an interim stay of all further proceedings H.M.O.P.No.1004 of 2022 filed by the respondent for restitution of conjugal rights

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6. In my view, even though the petitioner is taking care of the minor children, it appears that the respondent is being put to lot of inconvenience. Further, the Tr.O.P. filed by the respondent in Tr.O.P.No. 64 of 2022 was dismissed by presenting the copy of the interim order passed in this case.

7. Even though the petitioner is taking care of the minor children and that the respondent is staying with the parents in Thiruvallavayanallur, Vadipatti Taluk, Madurai District, the fact remains that the respondent is not employed. On the other hand, the petitioner



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though staying with the aged parents, it is his aged parents who are taking care of the children. The petitioner cannot leave the minor children aged about 4 and 5 years alone and still work in Aavin as a Driver. The distance between the two Courts are 50 Kilometers.

8. Considering the above, I am inclined to transfer H.M.O.P.No. 148 of 2021 pending on the file of the Sub Court, Melur to the Family Court, Madurai and to be tried along with H.M.O.P.No.1004 of 2022. Considering the fact that the petitioner is employed in Aavin, the physical appearance of the petitioner shall stands dispensed with for regular and routine hearing. The petitioner shall however appear before the Court as and when the Court directs and desires the petitioner to appear.

9. The Family Court, Madurai before whom H.M.O.P.No.1004 of 2022 is already pending shall endeavour to dispose of the H.M.O.P.Nos. 148 of 2021 and 1004 of 2022 as expeditiously as possible. The Family Court, Madurai shall also refer the parties to mediation considering the fact the petitioner and the respondent are having minor children aged about 3 and 5.



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10. The present Transfer Civil Miscellaneous Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

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

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To

- 1.The Family Court, Madurai.
- 2.The Subordinate Judge, Melur,
Madurai District.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN ,J.

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