



TR.CMP(MD)No.729 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.729 of 2022

and

C.M.P(MD)No.11608 of 2022

Vaitheeswari

... Petitioner

Vs

B.Manoj Prabakar

... Respondent

Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C, to withdraw HMOP.No.388 of 2022 before the II Additional Sub Court, Coimbatore and transfer the same to the file of the Family Court, Trichy to be tried along with HMOP.No.108 of 2022 on the file of the Family Court, Trichy.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.M.Jagadeesh Pandian

ORDER

This Transfer Civil Miscellaneous Petition is filed seeking transfer of the case in HMOP.No.388 of 2022 from II Additional Sub Court, Coimbatore to Family Court, Trichy.



TR.CMP(MD)No.729 of 2022

2.The marriage between the petitioner and the respondent was solemnized on 23.05.2019. There are differences of opinion between them. Therefore, the petitioner has filed a petition in HMOP.No.108 of 2022 seeking restitution of conjugal rights before Family Court, Trichy. After receiving summons in the above HMOP, the respondent has filed a petition for divorce in HMOP.No.388 of 2022 before the II Additional Sub- Court, Coimbatore. Since the petitioner / wife is a resident of Trichy district, she has filed this present Transfer Civil Miscellaneous Petition to transfer the above proceedings to Family Court, Trichy on the ground that she is depending upon her aged parents, she is having a child of tender age, no one is there to accompany her and therefore she finds it difficult to appear before Court at Coimbatore by travelling a long distance.

3.The learned Counsel for the petitioner submits that when the petitioner has filed the above HMOP before the Family Court, Trichy for restitution of



TR.CMP(MD)No.729 of 2022

conjugal rights, the respondent with an intention to harass the petitioner has filed a petition for divorce before the Court at Coimbatore, that too after entering appearance in the petition filed by the petitioner.

4.The learned Counsel for the respondent opposes this petition.

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.

6.This Court being satisfied with the reasons stated in the affidavit filed in support of this



TR.CMP(MD)No.729 of 2022

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.388 of 2022 on the file of the II Additional Sub Court, Coimbatore is transferred to Family Court, Trichy;

(ii)The learned II Additional Sub Judge, Coimbatore 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, Trichy, who in turn, on receipt of the case, shall try it along with HMOP.No.108 of 2022 and dispose of



TR.CMP(MD)No.729 of 2022

the same as expeditiously as possible.

WEB COPY No costs. Consequently, connected miscellaneous petition stands closed.

06.01.2023

Index: Yes/No

To

1.The Judge,
Family Court,
Trichy.

2.II Additional Sub Judge,
Coimbatore.



WEB COPY



TR.CMP(MD)No.729 of 2022

B. PUGALENDHI , J.

dsk

TR.CMP (MD) No. 729 of 2022

06.01.2023