



Tr.C.M.P(MD)No.788 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Tr.C.M.P(MD)No.788 of 2022

and

C.M.P(MD)No.12616 of 2022

B.Tamilselvi

... Petitioner/Respondent

Vs.

M.Balamurugan

...Respondent/Petitioner

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of Code of Civil Procedure, to pass an order withdrawing the petition for restitution of conjugal rights in H.M.O.P.No.1233 of 2022 on the file of the Family Court, Coimbatore and to transfer the same to the file of the Family Court, Madurai.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.M.Ramachandran



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ORDER

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The present revision petition has been filed by the wife seeking a transfer of H.M.O.P.No.1233 of 2022 pending on the file of the Family Court, Coimbatore to be transferred to Family court, Madurai on the ground that she is a permanent resident of Madurai and she is residing with her parents at Madurai along with a 3 year old minor child.

2. The learned counsel appearing for the respondent/husband had strenuously contended that the wife was set *ex parte* on 28.11.2022 and an application has been filed by the wife to set aside the *ex parte* order. When the matter has been posted for taking *ex parte* evidence, the present transfer civil miscellaneous petition is not maintainable. He further contended that this is an irregular procedure to be adopted while H.M.O.P is not at all pending on the file of Coimbatore.

3. I have carefully considered the submissions made on either side.

4. The respondent/husband has filed the entries in the e-Court services. It indicates that the husband has filed H.M.O.P.No.1233 of



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2022 and notice was ordered on 26.07.2022. Since summons were not served upon the wife, continuously it was listed for service of summons.

Finally, on 28.10.2022, it was adjourned to 28.11.2022 for service of summons. On the ground that summons have been served upon the wife, the first date of hearing was fixed as 28.11.2022. On the same date, the wife due to her non-appearance, has been set *ex parte* and thereafter, the matter has been adjourned for taking *ex parte* evidence.

5. It is an admitted fact that the wife is a permanent resident of Madurai and the present H.M.O.P is pending before the Family Court, Coimbatore. The transfer civil miscellaneous petition has been filed after filing an application for setting aside the *ex parte* order. It is also an admitted fact so far *ex parte* evidence has not been recorded and no *ex parte* decree has been passed in the divorce petition. Any matrimonial dispute cannot be decided in such an *ex parte* manner without affording due opportunity to the wife, especially when she is residing out station with a 3 year old minor child.

6. Considering the above said facts, this Court rejects the contentions raised by the learned counsel for the respondent/husband.



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H.M.O.P.No.1233 of 2022 pending on the file of the Family Court, Coimbatore and the application for setting aside the *ex parte* order are hereby withdrawn and transferred to Family Court, Madurai. The learned Family Judge, Madurai is directed to consider the application under Order 9 Rule 7 on merits and in accordance with law.

7. With the above said observation, this Transfer Civil Miscellaneous Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.03.2023

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

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To

- 1.The Family Court,
Coimbatore.
- 2.The Family Court,
Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.



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Order made in
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