



Tr.CMP.No.47 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Tr.CMP.No.47 of 2024
and
C.M.P.Nos.1075 & 1076 of 2024

Manimozhi Anbalagan

... Petitioner

Vs.

C.Shunmugasundar

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24(1)(b) of Civil Procedure Code r/w. Section 19(iii) of the Hindu Marriage Act, 1955 to withdraw H.M.O.P.No.22 of 2020 pending before the Family Court of Nilgris at Ootacamund and transfer the same to the file of the Sub Court, Coonoor.

For Petitioner : Mr.E.V.Chandru
for Mr.E.Chandrasekaran

For Respondent : Ms.Thanga Vadhana Balanishi



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ORDER

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The petitioner/respondent in H.M.O.P.No.22 of 2020 filed this petition seeking transfer of H.M.O.P. from the Family Court, Nilgiris at Ootacamund to Sub Court, Coonoor.

2.The marriage between the petitioner and the respondent took place on 02.11.2017 at Thiruverkadu and out of their wedlock, a girl child by name Jeswika was born on 23.08.2018. Later, some difference of opinion arose between them and arose matrimonial discord. The respondent herein filed H.M.O.P.No.680 of 2019 before the Sub Court, Poonamallee seeking divorce which was transferred at the instance of the petitioner from the Sub Court to the Family Court of Nilgiris at Ootacamund on the orders of this Court in Tr.CMP.No.14 of 2019 dated 27.01.2020, transferred H.M.O.P. re-numbered as H.M.O.P.No.22 of 2020.

3.The contention of the learned counsel for the petitioner is that after transfer of H.M.O.P., the petitioner filed I.A.No.2 of 2021 seeking interim maintenance. The Family Court by order dated 13.04.2022 directed the



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respondent to pay Rs.7,000/- as interim maintenance and Rs.10,000/- towards litigation expenses, but the same not complied with. Thereafter, the petitioner filed I.A.No.2 of 2022 under Section 151 CPC to struck off the pleading and evidence of PW1 in H.M.O.P.No.22 of 2020 for willful non-payment of maintenance amount by the respondent. In the said petition, no counter filed by the respondent and for two years, the petition is still pending. On the contrary, at the instance of the respondent the Family Court imposing exorbitant cost of Rs.10,000/- for not cross-examining PW1 twice on 09.11.2023 and 11.12.2023. The petitioner is a house wife with a five year old daughter without any income and she is finding it difficult to maintain herself and the minor daughter. The petitioner is a resident of Coonoor, she is travelling 55 kms up and down in the hills to attend the Court, an odious task and hence, sought for transfer. He further submitted that the respondent is employed as Software Project Engineer in Wipro, earning Rs.2.5 lakhs per months besides owning acres of agricultural land and ancestral property, having sufficient income, but failed to pay the interim maintenance amount and no action taken by the Family Court of Nilgiris at Ootacamund.



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4.The learned counsel for the respondent submitted that marriage between the petitioner and the respondent is an arranged marriage and they are relatives. Since the petitioner's mother now an elected President of Panchayat, gaining status exerting force, expecting the respondent to dance according to the wish of the petitioner, which was refused by the respondent. Aggrieved over the same, petitioner deserted the matrimonial home voluntarily, staying with her parents. The respondent took steps to reunite, but the petitioner refused. Thereafter, having left with no other option the respondent filed the divorce petition before the Sub Court, Poonamallee which was transferred to the Family Court of Nilgiris at Ootacamund at the instance of the petitioner. It was the petitioner who sought transfer of H.M.O.P. from Sub Court, Poonamallee to Family Court of Nilgiris at Ootacamund since it will be convenient for her to appear in the H.M.O.P. The respondent is attending the Family Court regularly from 2020 and the adjudication on 09.11.2023 and 11.12.2023 would show appearance of the respondent, his readiness for cross examination but it was the petitioner failed to cross examine the respondent by giving some excuses, dragging on



the case and harassing the respondent who has to travel 550 kms from Chennai to Ootacamund. The respondent is a Software Engineer and he is put to great difficulty undertaking long travel to the Family Court at Ootacamund but the petitioner failed to cross examine the respondent. Considering the plight of the respondent and the petitioner adopting dilatory tactics, the Trial Court imposed such cost. She further submitted that the petitioner paid the cost imposed by the Trial Court on 09.11.2023 and as regards the cost imposed on 11.12.2023, it is yet to be paid. Further, the respondent suffered fracture of his leg and with great difficulty he travelled from Chennai to Ootacamund, for that reason only cost of Rs.10,000/- was imposed by the Trial Court which is reasonable, not exorbitant one and nothing to be attributed for imposing a reasonable cost.

5.The learned counsel for the respondent paid the interim maintenance amount as directed and further produced the copy of the Demand Drafts and the particulars of payment made by the respondent to the petitioner, which are as follows:

1) Demand Draft drawn in favour of the petitioner in State



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Bank of India for Rs.75,000/- vide DD.No.846753 dated 04.01.2023;

2) Demand Draft drawn in favour of the petitioner in State Bank of India for Rs.25,000/- vide DD.No.730928 dated 08.11.2023;

3) Demand Draft drawn in favour of the petitioner in State Bank of India for Rs.57,000/- vide DD.No.731034 dated 03.01.2024.

4) Demand Draft drawn in favour of the petitioner in State Bank of India for Rs.77,000/- vide DD.No.847038 dated 18.01.2024.

6.The learned counsel for the respondent further produced the e-Court adjudication showing that by January 2024, the entire maintenance amount paid and the petition in I.A.No.2 of 2022 was closed. She fairly submitted that after January 2024, for the months of February to June 2024, interim maintenance amount is yet to be paid and the same would be paid within a period of two weeks.

7.Further, the respondent in the counter stated that since the petitioner's mother is the Chairman of Hullikal Town Panchayat at Coonoor,



whenever the petitioner attends the Family Court of Nilgiris at Ootacamund, she travels with her mother in Bolero vehicle with battery of persons, the respondent is in the fear of physical attack. In the event of the case transferred to Sub Court, Coonoor, the respondent would become easy target for physical attack, he apprehends danger for his life.

8.Considering the submissions made and on perusal of the materials, it is seen that it is the respondent who filed the divorce petition in H.M.O.P.No.680 of 2019 before the Sub Court, Poonamallee seeking divorce which was later transferred from the Sub Court, Poonamallee to the Family Court of Nilgiris at Ootacamund on the orders of this Court in Tr.CMP.No.14 of 2019 dated 27.01.2020 which got re-numbered as H.M.O.P.No.22 of 2020. Now the respondent apprehends fear in attending Sub Court, Coonoor cannot be ignored. It is not in dispute that the petitioner's mother is the Chairman of Hullikal Town Panchayat at Coonoor. Further, it is the petitioner who sought transfer of H.M.O.P. From Sub Court, Poonamallee to the Family Court of Nilgiris at Ootacamund. The respondent already paid the entire interim maintenance amount till January



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2024. The respondent further undertakes to pay the amount for the month of February to June 2024 within a period of two weeks and undertakes to pay without default in future. Further, the reason given by the petitioner for seeking transfer of H.M.O.P. from Ootacamund to Coonoor is not sustainable. Hence, the petitioner not made out any ground for transfer, the petitioner is residing at Coonoor travelling to Family Court of Nilgiris at Ootacamund is not far away and the Family Courts are constituted for exclusive trial and speedy disposal of matrimonial cases, it is not so in Sub Court, Coonoor. It is to be seen that considering the petitioner's request, this Court earlier transferred the case, now recalling the same without valid reasons is not acceptable. Further, the Trial Court considered the respondent's pain and suffering in attending the Court with fracture and imposed cost on the petitioner and the respondent is not particular in receiving the cost. In view of the above, this Court is inclined to set aside the cost imposed by the Trial Court on 11.12.2023 which is yet to be paid by the petitioner. The respondent is directed to pay the interim maintenance amount due for the months of February 2024 to June 2024 within a period of two weeks from the date of receipt of a copy of this order. Further, the



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Trial Court is directed to complete the proceedings in H.M.O.P.No.22 of 2020 within a period of three months from the date of receipt of a copy of this order. It is made clear that the observations made herein is only for the limited purpose of disposal of the above petition.

9. With the above direction, the civil revision petition stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.06.2024

cse

To

The Family Court of Nilgris,
Ootacamund



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M.NIRMAL KUMAR, J.

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