



Tr.CMP.No.392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Tr.CMP.No.392 of 2024

and

C.M.P.No.8242 of 2024

Kaushalya

... Petitioner

Vs.

Mukesh Jain

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code to withdraw the maintenance case in M.C.No.413 of 2007, now in the 17th year of pendency, from the file of the Principal Judge of the Family Court at Chennai and transfer to any of the Additional Family Court at Chennai.

For Petitioner : Mr.N.Seshadri

For Respondent : Ms.S.P.Aarthi



WEB COPY



Tr.CMP.No.392 of 2024

ORDER

The petitioner, estranged wife of the respondent filed a maintenance petition in M.C.No.413 of 2007 which is pending for the past 17 years before the Principal Family Court, Chennai citing pendency of miscellaneous petitions despite the orders of this Court and the Apex Court. Hence, the present petition filed seeking transfer of the case to some other Court.

2.The contention of the learned counsel for the petitioner is that the marriage between the petitioner and the respondent took place on 17.05.1995. The respondent is running a shop in the name of 'Keshirimal Babulal' in Jodhpur and also having a jewellery and finance business. Their marriage was held at Jodhpur and after the marriage, both the petitioner and the respondent were living along with respondent's parents at Jodhpur. Out of their wedlock, they had no issues. At the time of marriage, customary gifts of gold jewels, silver articles, household articles and other items were presented as sridhana. The expense for the marriage was borne by the petitioner's father and following the marriage, the petitioner's father gifted



several articles for all the functions. Soon after the marriage, the petitioner was ill-treated by the respondent and his family members. She was treated as servant maid to do all household works, she was also insulted, abused and at times, she was also physically assaulted. The petitioner was not allowed to talk even to her parents and her parents were also unable to contact her. The petitioner was residing with the respondent and his family members for nearly six months. The neighbours of the petitioner in Jodhpur who have seen the petitioner suffering at the hands of the respondent and his family members, lodged a complaint to the Police and the Police enquired the respondent. The respondent gave an undertaking to the Police that the petitioner and the respondent would set up an independent family and live separately but that was also did not work out. The ill-treatment and sufferings of the petitioner continued. Thereafter, on the information from All Women Police Station, Jodhpur, the petitioner's father went to Jodhpur and saved his daughter from the ill-treatment, harassment and cruelty. Thereafter, the petitioner filed a maintenance petition in M.C.No.413 of 2007. The respondent knowing well that the petitioner was taken to Chennai by her father and she is residing in Chennai but by giving her



Tr.CMP.No.392 of 2024

Jodhpur address, obtained an exparte decree of divorce on 29.11.2008.

WEB COPY

3.The petitioner filed a petition for restitution of conjugal rights in O.P.No.348 of 2011. The petitioner came to know about the exparte order of divorce when the respondent filed a copy of the exparte decree on 07.01.2012 in I.A.No.55 of 2012 in the petition filed for restitution of conjugal rights. Thereafter, the petitioner filed a transfer petition before the Apex Court to transfer the case from Jodhpur to Chennai and the same was transferred and re-numbered as O.P.No.3852 of 2015. The petitioner filed a petition in I.A.No.1987 of 2016 to set aside the exparte order and the VI Additional Family Court, Chennai set aside the exparte decree on 18.05.2022. The Apex Court recorded that the I Additional Family Court, Chennai awarded maintenance of Rs.20,000/- per month to the petitioner with effect from 22.08.2007 and it also recorded that after obtaining exparte decree of divorce, the respondent married another woman and had a child from the marriage. The petitioner produced the Commercial Tax Department documents for the purpose of proving that the respondent has got sufficient income, good turnover of business in the name of Shreepal



Marketing and also other contemporary documents. Thereafter, the Apex

Court in Criminal Appeal Nos.1129-1130 of 2019 [Arising out of SLP(Crl.)

Nos.643-644 of 2019 by order dated 24.07.2019 passed the following order:

“(1) The order of remand passed by the High Court on 20 November 2018 shall stand confirmed;

(2) The First Additional Family Court, Chennai is directed to dispose of the proceedings of remand within a period of six months from the date of receipt of a copy of this order after allowing the parties an opportunity to adduce such further evidence as they may desire within a period of two months from the date of receipt of a certified copy of this order;

(3) In the meantime, the order passed by the Trial Court for the grant of maintenance shall operate as an ad interim direction and the arrears which are payable to the appellant shall be paid over in six equal monthly installments, the first of which shall be payable on or before 14 August 2019. The rest of the installments shall be payable on or before ninth day of every succeeding month. Any payment which is made to the appellant in pursuance of above directions shall abide by the final directions of the Family Court in regard to the payment of maintenance; and



(4) In the event that there is any failure on the part of the respondents to comply with the order for deposit of arrears and month to month installments, it will be open to the appellant to apply before the Family Court to get the defence of the respondent struck off.

The parties have agreed, in the meantime, to explore the possibility of a mediated settlement and have agreed to the nomination of Mr.Sriram Panchu, learned senior counsel practising before the Madras High Court for that purpose. We request Mr.Sriram Panchu to act as a mediator. Any settlement may be filed by the parties by moving a Miscellaneous Application before this Court.

The appeals are disposed of accordingly.”

4.But the maintenance amount was not paid by the respondent. The Apex Court observed that in the event of there being any default in payment of interim maintenance, the defence of the respondent should be struck off. Accordingly, the defence of the respondent was struck off on 15.03.2021. The petitioner's suffering and damages arising from the delay in disposal are not in small measures due to improper handling of various miscellaneous petitions together with the main case by the Principal Family Court,



Tr.CMP.No.392 of 2024

Chennai. The Principal Family Court, Chennai neither followed the Apex Court directions nor the judgment of this Court in furnishing the certified copies of the unmarked documents. The petitioner filed a petition on 16.12.2019 in S.R.No.6041 of 2019 seeking return of her gold jewels, silver and other sridhana articles but it is yet to be numbered. Suddenly on 18.03.2024, the petition was returned to the petitioner without any reference. The petitioner filed a petition under Section 128 Cr.P.C. to directing the respondent to pay arrears of maintenance amount or in alternate to punish him for non-payment of interim maintenance which was confirmed by the Apex Court which has not been acted upon. There are about 15 to 16 miscellaneous petitions which are in hibernation for months and years which suddenly re-surfaced on 18.03.2024 and delivered back to the petitioner. In view of the stotic silence shown by the Principal Family Court, the petitioner gave a representation to the Hon'ble The Chief Justice of this Court and explanation was sought for from the Principal Family Court, Chennai and the petitioner is uncomfortable in appearing before the Family Court. Further, this Court in C.R.P.No.3521 of 2016 passed an order which has been totally disregarded by the Family Court. Hence, the



Tr.CMP.No.392 of 2024

petitioner apprehends delivery of fair justice on continuation of proceedings in M.C.No.413 of 2007 by the Principal Family Court, Chennai.

5.The learned counsel for the respondent, at the outset, informed that he is not averse of transfer of maintenance case from Principal Family Court to any of the Family Court, Chennai but the petitioner on her admission admits that there are about 15 to 16 miscellaneous petitions which has caused delay in disposal of the maintenance case. The petitioner filing miscellaneous petitions and not taking proper steps, blaming the Court and others for the delay is not proper. Without going into the merits of the petitioner's grievance and apprehension, the respondent agrees for transfer with the only condition that the proceedings to be completed within the stipulated period.

6.Considering the submissions made and on perusal of the materials, this Court not advertent to any of the adversity made against the Principal Family Court, Chennai, this Court directs the Principal Family Court, Chennai to transfer the case in M.C.No.413 of 2007 to the file of the III



Tr.CMP.No.392 of 2024

Additional Family Court, Chennai within a period of fifteen days from the date of receipt of a copy of this order. The III Additional Family Court, Chennai to complete the proceedings in M.C.No.413 of 2007 and dispose of the same within a period of three months from the date of receipt of records. Both the petitioner and the respondent to co-operate with the Family Court as per the undertaking given before this Court to complete the proceedings within the stipulated period.

7..Accordingly, the Transfer Civil Miscellaneous Petition is allowed.
No costs. Consequently, connected Civil Miscellaneous Petition is closed.

09.07.2024

cse

Note: Issue order copy on 15.07.2024

To

- 1.The Principal Family Court,
Chennai.
- 2.The III Additional Family Court,
Chennai.



WEB COPY



Tr.CMP.No.392 of 2024

M.NIRMAL KUMAR, J.

cse

Tr.CMP.No.392 of 2024

09.07.2024