



Tr.C.M.P.No.1137 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 06.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE BATTU DEVANAND**

Tr.C.M.P. No. 1137 of 2022

and

C.M.P. No. 19300 of 2022

Nirmala @ Christy Nirmala

... Petitioner

Vs.

Rajesh

... Respondent

**Prayer:** Transfer Civil Miscellaneous Petition is filed under Section 24 of C.P.C., praying to withdraw and transfer the S.M.O.P.No.108 of 2021 on the file of the Principal District Court, Thanjavur and to the petition in Family Court of Nagapattinam, pending on the file for disposal in accordance with law and thus render justice.

For Petitioner : Mr. J. Manikandan

**ORDER**

This Transfer Civil Miscellaneous Petition has been filed to withdraw S.M.O.P.No.108 of 2021 on the file of the Principal District Court, Thanjavur and transfer the same to the Family Court of Nagapattinam.

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2. The petitioner and respondent are wife and husband. The respondent herein has filed an Original Petition for grant of divorce before the Principal District Court, Thanjavur in S.M.O.P.No.108 of 2021. The petitioner had filed the Original Petition in H.M.O.P.No.37 of 2022 on the file of the Family Court, Nagapattinam against the respondent herein for restitution of conjugal rights. The said Original Petition is pending.

3. It is the contention of the learned counsel for the petitioner that the petitioner is not in a financial position to travel from Nagapattinam to Thanjavur for every hearing of the case and she has got some physical ailments and other health problems and the petitioner has to face several hardships if both cases are not consolidated and tried together and sought to transfer S.M.O.P.No.108 of 2021 on the file of the Principal District Court, Thanjavur to the Family Court, Nagapattinam to try together.



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4. On perusal of the record, it appears that this Court ordered notice to the respondent on 17.11.2022 and private notice is also permitted. Accordingly, the learned counsel for the petitioner has taken up notice to the respondent by registered post. The notice is returned with endorsement of the postal department that “unclaimed”.

5. The Hon'ble Apex Court and various High Courts time and again held that the notice unclaimed by the parties has to be treated as deemed service. Accordingly, in the present case also, as the respondent “unclaimed” the notice is to be treated as deemed service.

6. In *Rajani Kishor Pardeshi v Kishor Babulal Pardeshi*,<sup>1</sup> the Hon'ble Apex Court held that while going into the merits of a transfer application, the Court are required to give more weight and consideration to the convenience of the female litigants, and the Courts should desist from putting female litigants under undue hardships. Therefore, the convenience of the wife is to be preferred over the convenience of the husband.

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<sup>1</sup> 2005(12)SCC237



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7. Considering the facts and circumstances of the case and the petitioner is being a lady, definitely she has to face difficulties to travel from Nagapattinam to Thanjavur to attend the case filed by the respondent. In our considered view, it is appropriate to transfer the S.M.O.P.No.108 of 2021 on the file of the Principal District Court, Thanjavur to the Family Court, Nagapattinam to try along with H.M.O.P.No.37 of 2022 in the interest of justice.

8. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the S.M.O.P.No.108 of 2021 pending on the file of Principal District Court, Thanjavur, is hereby withdrawn and transferred to the Family Court, Nagapattinam to try along with the H.M.O.P.No.37 of 2022. The Principal District Court, Thanjavur shall transmit the entire record in S.M.O.P.No.108 of 2021 pending on his file to the Family Court, Nagapattinam, forthwith, by duly indexed.



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WEB COPY 9. Consequently, connected miscellaneous petition is closed.

10. There shall be no order as to costs.

**06.06.2024**

Index : Yes / No

Neutral Citation : Yes / No

AT

**Note: Issue order copy within three days.**

To

1.The Principal District Court, Thanjavur.

2.The Family Court, Nagapattinam.



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**BATTU DEVANAND, J.**

AT

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