



Tr.CMP No.1001 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

Tr.C.M.P. No.1001 of 2024

T.Arul Krishnan : Petitioner

versus

T.K.Sathya : Respondent

Prayer: Transfer petition filed under Section 24 of CPC to withdraw and transfer the complaint in DVC No.266 of 2023 from the file of Judicial Magistrate, Special Court for Domestic Violence Act Cases, Coimbatore to Judicial Magistrate Court at Coimbatore.

For Petitioner : Mr.M.Sivavarthanan
For Respondent : Mr.C.Silambannan,
Senior Counsel,
for Mr.K.Vasanthanayagam

ORDER

The petitioner seeks transfer of DVC No.266 of 2023 on the file of the Judicial Magistrate, Special Court for Domestic Violence Act cases, Coimbatore, to any other Magistrate Court in Coimbatore. The petitioner before me is the respondent in the domestic violence



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petition.

2. The petitioner and the respondent solemnized their wedding on 19.08.2007. The wedlock produced a girl child on 03.09.2008. Thereafter, parties separated. The husband initiated HMOP No.786 of 2023 on the file of the Family Court, Coimbatore and wife, not wanting to be left out of the litigation game, initiated DVC No.266 of 2023 on the file of the Special Court, Coimbatore.

3. The cause of action for this transfer petition is that on 21.08.2024, the wife moved a miscellaneous application, in DVC No.266 of 2023, seeking a direction to the transfer petitioner to provide a 'no objection' letter to the Regional Passport Officer, Coimbatore, so as to enable the minor to secure a passport. The purpose for securing a passport is to enable the child to go abroad and visit certain areas of academic interest. The visit, as it comes during the course of inquiry, was being arranged by the educational institution where the child is studying.

4. The miscellaneous application was numbered and notice was ordered to the respondent. Learned Judge, considering the exigency involved, directed the husband to file a counter-affidavit on the very



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next day, i.e. notice was ordered on 03.09.2024 and the husband was called upon to file counter-affidavit by 04.09.2024.

5. The husband alleges that during the course of inquiry, the learned Judge had directed him not to leave the Court premises unless and until he issues the “no objection” letter. The matter was called the following day and the husband, instead of filing his counter-affidavit and contesting the application on merits, filed a memo stating that he had lodged a complaint with the Registry of this Court and that he is also going to move a transfer petition and sought the matter to be adjourned for 65 days. The learned Judge recorded the said facts in his order dated 04.09.2024 and set the husband ex-parte and adjourned the matter. Finally, he allowed the application on 09.09.2024.

6. Mr.Sivavarthanan submits that the order dated 09.09.2024 has not yet been issued to him nor has it been uploaded on the website of the Court. His grievance is that the learned Magistrate had called upon his counsel to make an endorsement that he had “no objection” for the application to be allowed.

7. Taking into consideration the allegations made, I sought for



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the remarks of the learned Judicial Officer. Learned Judicial Officer has sent a detailed report. In the report, he has stated that the respondent refused to file a counter statement and did not even seek time for filing a counter. All that he did was to file a memo stating he is going to prefer a transfer petition. Hence, being left with no other option, he states that he had set him ex-parte, proceeded further and disposed of the application.

8. Insofar as notice is concerned, as per Rule 31 of the Civil Rules of Practice and Circular, Standing Orders framed by this Court for the guidance of all the subordinate Courts, notice in an interlocutory application should be given to the opponent by the applicant, not less than three days, before the day appointed for hearing of the application. The said period of three days can be reduced, considering the exigencies of the case. It is not in dispute that the learned Judge had ordered notice of 24 hours. The reason for this exigency is that the passport of the child was pending with the Regional Passport Officer who required 'no objection' of the father of the child. Though the petitioner was set ex-parte on 04.09.2024, from that date, till the orders were passed on 09.09.2024, the petitioner/husband did not take any steps to set aside the same. Furthermore, considering the



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fact that it is the child which wants to go abroad for academic purpose, the learned Judge had felt the urgency in the matter. It is in the best interest of the child that she sees the world, and perhaps this worked in the mind of the learned Judge when he ordered a shorter period of notice than three days. In any event, the allegations of bias against a judicial officer falls way short of the necessary requirements for transfer, as required under Section 24 of the Code of Civil Procedure. I am satisfied with the report dated 09.10.2024. I do not find any merits in the transfer petition and the same is dismissed. There will be no order as to costs. Consequently, CMP No.21919 of 2024 also stands dismissed.

9. The learned Judicial Officer is requested to issue a copy of the order dated 09.09.2024 at the earliest. It is for the transfer petitioner to workout his rights against the said order in the manner know to law.

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Index : Yes/No
tar

To
The Judicial Magistrate,

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Special Court for Domestic Violence Act Cases,
Coimbatore



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V. LAKSHMINARAYANAN, J.

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