



Tr.CMP.(MD)No.113 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Tr.CMP (MD) No.113 of 2024

and

CMP (MD) No.2165 of 2024

K.Usha

Through her Power of Attorney

Mr.Sreepathy : Petitioner/Petitioner

Vs.

R.Murali

: Respondent/Respondent

PRAYER:-Civil Miscellaneous Petition is filed under section 151 of the Civil Procedure Code, to withdraw the proceedings in HMOP No.208 of 2019 on the file of the Sub Court, Thirumangalam, Madurai District and to transfer the same to the Sub Court, Pudukkottai and pass such further or other orders.

For Petitioner : Mr.I.Robert Chandra Kumar

For Respondent : Mr.D.Rajesh

O R D E R

This Civil Miscellaneous Petition is filed seeking transfer of the petition in HMOP No.208 of 2019 filed by the respondent on the file of the Sub Court, Thirumangalam to the Sub Court, Pudukkottai.

2.The facts in brief:-



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HMOP No.208 of 2019 was filed by the respondent/husband herein against the petitioner seeking a decree of divorce before the Sub Court, Thirumangalam. The petitioner/wife appeared through her Power of Attorney namely Sreepathy, who is her brother.

3. Seeking transfer of the matter from the Court of Subordinate Judge, Thirumangalam to the Court of Subordinate Judge, Pudukottai, this petition has been filed by the wife with the following averments:-

"The marriage between the husband and wife took place, on 23/08/2007 at Thirumangalam as per their religious customary rites. They started their living in Nanganallur, Chennai. A female child was born, on 29/04/2009. At that time, she was working as Software Engineer at WIPRO Company. After 2014, she shifted to Cognizant Technologies. Now, she is working in London. She joined duty in London, on 18/11/2016. The husband and the daughter also went to London and stayed for one month. Later, the husband and daughter returned to India, on 14/12/2016. Now they are living in Chennai. Later, again the husband and daughter went to London, on 19/08/2017. During their stay in London, frequent quarrel



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between the husband and the wife. The husband left out to India, but the daughter staying with her in London. In 2019, the husband filed a divorce petition. So, she is addressed as if living in her parental home. Summon was received by her parents. Due to eye illness, there is a possibility of loosing her job. Now they are settled at Pudukottai and living there. Later, the Power of Attorney was appointed in IA No.1 of 2023. That was also allowed. The Power of Attorney is working in Omega Health Care Private Limited, Trichy. He is not able to attend the Court regularly. On that account, this petition is filed.

4.The respondent/husband appeared and made objection stating that the wife is now staying in London and he is in Chennai. The convenience of the Power Agent cannot be a matter for transfer. He would rely upon the order of this court in the case of ***PL.Murugapan, Rep. by his Father & Power of Attorney Palaniappan and another Vs. NIL (2022-3-LW-782)***. Wherein, it has been specifically observed that the Power of Attorney convenience in case of the matrimonial issue should not be the deciding factor. He would also submit that in case of matrimonial proceedings, the Power of Attorney cannot give evidence over the issue. If at all, only the wife must give



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evidence, since, the facts are exclusively within her knowledge. So according to him, as per the judgment of the Hon'ble Supreme Court in Santhini Vs. Vijaya Venketesh (AIR 2017 SC 5745), video conferencing can be extended to the parties. So, he made strong objection.

5.Per contra, the learned counsel appearing for the petitioner would submit that now they shifted the residence to Pudukottai and there can be no inconvenience for the respondent/husband to attend the Court in Pudukkottai.

6.But as stated above, when the wife is not attending the Court, the convenience of the Power of Attorney cannot be a reason for transfer. On that sole ground, this petition is liable to be dismissed.

7.In the result, this Transfer Civil Miscellaneous Petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

22/03/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Court,
Thirumangalam,
Madurai District.

2.The Sub Court,
Pudukottai.



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G.ILANGOVAN, J

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