



TR.C.M.P. (MD) No. 125 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

TR.C.M.P. (MD) No. 125 of 2024
and
C.M.P. (MD) No. 2578 of 2024

Shobika Devi

... Petitioner

-VS-

T.Dharmaraj

... Respondent

Prayer:- Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, 1908, to withdraw H.M.O.P. No. 56 of 2024 on the file of the Family Court, Tiruchirapalli filed by the Respondent herein and the same may be transferred to the Court of the Principal Subordinate Court, Thirumangalam.

[Prayer amended vide order dated 26.03.2024]

For Petitioner : Mr. K.M. Karunakaran

For Respondent : Mr. T.Lenin Kumar



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ORDER

This application invoking Section 24 of the Code of Civil Procedure, 1908, has been filed relating to a matrimonial dispute between the parties. The Husband, *viz.*, Dharmaraj, has filed H.M.O.P. No. 56 of 2024 seeking divorce from his Wife, *viz.*, Shobika Devi, in the Family Court, Tiruchirappalli, which is sought to be transferred by the Wife to the Principal Subordinate Court, Thirumangalam.

2. Heard Mr. K.M. Karunakaran, Learned Counsel for the Wife, Mr. T.Lenin Kumar, Learned Counsel appearing for the Husband and perused the materials placed on record, apart from the pleadings of the parties.

3. It is the case of the Wife that she would have to travel a distance of more than 300 kms from Thirumangalam, Madurai District, leaving her parents home to the Family Court, Tiruchirappalli to effectively defend the case filed against her by the Husband. That apart, she also expresses life threat from the Husband and his family members at Tiruchirappalli.



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4. The Husband opposes such transfer by pleading that there is life threat to him at Thirumangalam, where the Wife and her family members are residing.

5. It has been brought to notice that the Wife has filed a case in M.C. No. 25 of 2023 on the file of the Judicial Magistrate Court, Thirumangalam and the Husband had filed Crl.O.P. (MD) No. 2110 of 2024 to transfer it to the file of the Judicial Magistrate, Tiruchirappalli, which was dismissed by order dated 12.02.2024 passed by this Court holding as follows:-

“3. During the course of the submission, the learned Counsel for the Petitioner submitted that even though the Petitioner is the resident of Trichy, he is employed as a Train Ticket Examiner in Chennai Division. That cannot be a ground to seek withdrawal of the petition from the Court of the learned Judicial Magistrate, Thirumangalam, where, his wife originally resides as per the averments in the maintenance case in M.C.No. 25 of 2023. It is to be noted that the Train Ticket Examiner can travel up to Madurai. From Madurai to Thirumangalam, it is hardly one hour drive. Therefore, it does not cause any harassment to the Petitioner. Not only that, in Maintenance Cases the Respondent's



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husband is not expected to be present in Court on every hearing. He can engage Counsel by filing a vakalat, so that his appearance can be dispensed with by the learned Judicial Magistrate, Thirumangalam. Only if his presence is required for cross examination of P.W.1 or for his own deposition as a witness, his presence is required. The Petitioner can file appropriate petition before the learned Judicial Magistrate, Thirumangalam to dispense with the personal appearance for every hearing and only if his presence is required, he can inform his Counsel to appear on a day of his choice. For this inconvenience of the Petitioner, if this petition is withdrawn, it will go against the ruling of the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court had reiterated that, as far as possible, matrimonial dispute shall be conducted in the place where the woman resides ordinarily.

4.The apprehension expressed by the Petitioner is that his wife had preferred DVOP also cannot be accepted. The presiding Judges of the trial Courts are expected to protect the witnesses as well as the accused before them. Therefore, if at all there is a threat to the Petitioner or any injury caused to



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him by anyone of the relatives to the Petitioner, the Petitioner can represent his apprehension to the trial Judge, so that the parties will be warned accordingly. That cannot be a ground to seek withdrawal of the petition on mere apprehension.”

6. Having regard to the rival submissions *viz-a-viz* the pendency of M.C. No. 25 of 2023 filed by the Wife before the Judicial Magistrate Court, Thirumangalam and the earlier order dated 12.02.2024 in Crl.O.P. (MD) No. 2110 of 2024 passed by this Court referred supra, this Court is of the considered view that balance of convenience is in favour of conducting the proceedings at the Court within whose territorial limits of jurisdiction the residence of the Wife is located. In the event of any life threat from the Wife or her family members, the Husband may bring the matter with supporting materials to notice of the Presiding Officer of the Court, who would conduct such enquiry into it as may be deemed fit, and take remedial action including sending of report to this Court for re-transfer of the case, if necessary, in accordance with law.

7. In view of the foregoing discussion, the case in H.M.O.P. No. 56 of 2024 on the file of the Family Court, Tiruchirappalli is transferred to the



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Principal Subordinate Court, Thirumangalam, where the Wife is residing and both the parties shall appear before that Court on the next date of hearing, which is fixed as 05.06.2024, for conduct of further proceedings from its present stage.

In the result, the Transfer Civil Miscellaneous Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed.

No costs.

16.04.2024

Index : Yes/No
Internet : Yes/No

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To

1. The Family Court, Tiruchirapalli.
2. The Principal Subordinate Court, Thirumangalam.
3. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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P.D. AUDIKESAVALU, J.

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