



Tr.C.M.P(MD)Nos.329 and 511 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.10.2024

Pronounced on : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)Nos.329 and 511 of 2024

and

C.M.P(MD)Nos.12188 and 7278 of 2024

Tr.C.M.P(MD)No.329 of 2024

Dr.P.S.Aravind Raj

... Petitioner

Vs.

B.Anusuya

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Civil Procedure Code, to withdraw the petition in H.M.O.P.No.13 of 2024 on the file of the Sub Court, Thoothukudi and transfer the same to the Sub Court, Chengalpattu.

For Petitioner : Ms.J.R.Annie Abinaya

For Respondent : Mr.I.Robert Chandrakumar



Tr.C.M.P(MD)Nos.329 and 511 of 2024

Tr.C.M.P(MD)No.511 of 2024

B.Anusuya

... Petitioner

Vs.

Dr.P.S.Aravind Raj

... Respondent

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Civil Procedure Code, to withdraw the proceeding in H.M.O.P.No.78 of 2022 pending before the Principal Subordinate Court, Chengalpattu and transfer the same to the Subordiante Court, Thoothukudi District.

For Petitioner : Mr.I.Robert Chandrakumar

For Respondent : Ms.J.R.Annie Abinaya

COMMON ORDER

1.1 The petition in Tr.C.M.P(MD)No.329 of 2024 is filed by the petitioner/husband seeking an order to withdraw H.M.O.P.No.13 of 2024 on the file of the Sub Court, Thoothukudi and to transfer the same to the Sub Court, Chengalpattu.

1.2 The petition in Tr.C.M.P(MD)No.511 of 2024 is filed by the petitioner/wife seeking an order to withdraw H.M.O.P.No.78 of 2022 on



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the file of the Principal Sub Court, Chengalpattu and to transfer the same to the Sub Court, Thoothukudi.

2. For the sake of convenience, the parties as arrayed in Tr.C.M.P(MD)No.511 of 2024 is adopted.

3.The facts in brief:-

The petitioner is the wife of the respondent and their marriage was solemnized on 12.06.2013 at Pudukottai Village of Thoothukudi District. Out of wedlock, they were blessed with a daughter, who is now 9 years old. Due to misunderstandings between them, they are living separately. The respondent filed H.M.O.P.No.78 of 2022 before the Principal Sub Court, Chengalpattu, for divorce. The petitioner has filed H.M.O.P.No.13 of 2024 before the Sub Court, Thoothukudi, for restitution of conjugal rights.

4. The learned counsel for the petitioner/wife has submitted that the petitioner was driven out by the respondent and the petitioner with her daughter now residing along with her parents. They settled at Thoothukudi. Moreover, the petitioner's daughter is studying in Amirtha



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Vidayalam at Thoothukudi. The petitioner finds it very difficult to travel long distances to attend the Court at Chengalpattu. The respondent/husband is not maintaining the petitioner. The convenience of the wife is to be considered in transfer of matrimonial cases. In support of his submission, the learned counsel relied on the order of the **learned Single Judge of this Court** passed in **Tr.C.M.P.No.466 of 2023, dated 08.11.2023**

5. The learned counsel for the respondent/husband objected the petition of wife. The learned counsel further submitted that in 2021, the respondent was suffering from Hemorrhoids and was admitted in the hospital, but the petitioner chose to go her parental home at Thoothukudi and never turned up. The respondent being sufferer of several ailments is maintaining his aged parents. The respondent finds it very difficult to travel. The petitioner's brother is an advocate, who is practicing at Thoothukudi and her father also is a politician, who is the District Secretary of the political party. Therefore, the transfer may be considered to Madurai. In support of his submission, the learned counsel for the respondent relied on the citations reported in **1994 AIR 853 and 1994 SCC (1).**



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6. Submissions of both sides considered. The respondent and the petitioner are husband and wife. Due to misunderstandings, they are living separately and in such circumstances, the petitioner filed the petition for restitution of conjugal rights before the Sub Court, Thoothukudi. The respondent filed the divorce petition before the Principal Sub Court, Chengalpattu. The petitioner states that she has settled with her parents at Thoothukudi where her daughter is studying in a school by producing a copy of her school ID card.

7. The proposition of law regarding transfer petitions, more specifically in the matters of matrimonial cases, is well settled by this Court and also by the Hon'ble Supreme Court in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010, wherein in paragraph Nos.21 and 22, it has been observed as under:-

"21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of



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the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts."

(ii) In yet another case in Tr.C.M.P(MD)Nos.138 and 139 of 2006, dated 30.08.2006, this Court has considered the following judgments of Hon'ble Supreme Court of India:-

*"(1). In the case of **Mona Aresh Goel vs. Aresh Satya Goel [(2000) 9 SCC 255]**, when*



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the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

*(2) In the case of **Geeta Heera vs. Harish Chander Heera [(2000) 10 SCC 304]**, the Hon'ble Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.*

(3) In the case of Lalita A.Ranga vs. Ajay Champalal Ranga [(2000) 9 SCC 355], the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

8. Even in recent years, the Hon'ble Supreme Court has reiterated the difficulties faced by the wife while attending the divorce petition filed by the husband and transfer the divorce petition where the wife ordinarily resides. The Hon'ble Supreme Court has observed and held in paragraph Nos.9 to 12 in its order, dated 08.07.2022 passed in **CIVIL**



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APPEAL NO(S). 4894 of 2022 (Arising out of S.L.P.(C)No(s).16465

of 2021), which is filed against the rejection of Tr.C.M.P(MD)No.473 of

2020 of this Court as follows:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by



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the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

11. As noticed above, the appellant is a young lady aged about 21 years, staying alone along with her aged parents. Under the above circumstances, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the respondent seeking annulment of marriage. Further, it is also just and proper to club all the three cases together to avoid multiplicity of the proceedings and conflict of decisions. Therefore, the High Court was not justified in rejecting transfer petition bearing TR.C.M.P.No.473 of 2020, filed by the appellant herein.

12. Resultantly, the appeal succeeds and is accordingly allowed. The Order dated 19.11.2020 passed by the High Court in TR.C.M.P. NO.473 of 2020 is set aside. We direct transfer of F.C.O.P. No.125 of 2020 pending consideration before the Family Court, Vellore to the jurisdictional Family Court at Chennai.

So it is well settled proposition of law by the Hon'ble Supreme Court, whenever the transfer petition is filed in matrimonial disputes, the



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convenience of the wife should be predominantly looked into and the wife's convenience shall be given preference. The citations relied on by the respondent is of the year 1994, which are not applicable to the circumstances of this case.

9. The respondent opted transfer to Madurai, which is also not useful to both parties. The transfer is sought to the Sub Court and hence, the appearance of the respondent in each and every hearing need not necessary except on material hearing. Therefore, taking note of the settled position of the convenience of the wife in matrimonial cases, this Court is of the view that the transfer petition filed by the petitioner/wife is to be allowed and the transfer petition filed by the respondent/husband is to be dismissed.

10. In the result,

(i) The petition in Tr.C.M.P(MD)No.511 of 2024 is allowed. The petition in H.M.O.P.No.78 of 2022 on the file of the Principal Sub Court, Chengalpattu, is hereby withdrawn and transferred to the file of the Sub Court, Thoothukudi, for disposal in accordance with law. The learned Principal Sub Judge, Chengalpattu, is directed to transmit



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the entire records pertaining to the case in H.M.O.P.No.78 of 2022 to the transferee Court, within a period of two weeks from the date of receipt of a copy of this order.

(ii) The petition in Tr.C.M.P(MD)No.329 of 2024 is dismissed.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

02.12.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

- 1.The Sub Court,
Chengalpattu.
- 2.The Sub Court,
Thoothukudi
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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